

1907-047 Chancery Causes: William M. Young vs. W. B. Nickels
Lee Co. W. B. Nickels vs. William M. Young

Collier, Palmer, Irvine, Christian

CA Contract Dispute
T Property
Transportation

Oversize Box 1:
-1 Plat

-Deed

CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

WILLIAM M. YOUNG,

v.

W. B. NICKELS.

BILL IN CHANCERY.

TO THE HONORABLE H. A. W. SKEEN, JUDGE OF THE CIRCUIT COURT FOR
LEE COUNTY, VIRGINIA:

Your Orator, William M. Young, complaining, respectfully
showeth unto Your Honor as follows;

Prior to the 15th day of February, 1905, your orator
was ~~sieged~~^{is} with a certain tract or parcel of land lying and being
in Lee County, Virginia, containing one hundred and seventy five
and three one hundredths (175.03) acres, excepting the right of
way of the V. & S. W. Railway Company, which being deducted left
a net boundary, of one hundred and sixty seven and eighty four
one hundredths (167.84) acres, excepting certain minerals and
mineral and timber rights therein, and certain rights and priv-
ileges in and to a certain spring, and in and to a certain other
tract of land adjacent to said above recited tract of land,
containing thirty acres, more or less;

Thereafter, to-wit, on the 15th day of February, 1905,
your orator, together with his wife, sold and by deed of said
date conveyed to the said W. B. Nickels the above mentioned prop-
erty and rights, for a consideration of \$4000.00, \$3000.00 of
which was paid, and \$1000.00 of which was evidenced by two
certain negotiable deferred purchase money notes, recited in said
deed, as bearing date on the 15th day of February, 1905, for
\$500.00 each, due in six and twelve months from that date with
interest at the rate of six per centum per annum from date until

paid, but which said notes are in reality dated on the 1st day of August , 1904,, were due in six and twelve months from the 1st day of August, 1904, and bear interest from that date until paid; and to secure the payment of which said deferred instalments of purchase money, a vendor's lien was retained in the deed aforesaid on the said land for the benefit of your orator, a certified copy of which said deed, which was recorded in the Clerk's Office of Lee County, Virginia, *on the 21st day of April, 1905*, in Deed Book ____ page _____, is filed herewith as a part hereof, marked "Exhibit 1"; and the originals of which said notes are filed herewith marked Exhibits 2 and 3, respectively, and are prayed to be treated as a part hereof;

Your orator avers that on the back of the said twelve months note there is the following endorsement:

"This note is not to be collected until the deed of trust against the land is satisfied.

Wm. Young."

Your orator is informed, believes and charges, and avers that the deed of trust here referred to was a deed of trust to W. S. Mathews, Trustee, or to W. S. Mathews, Commissioner, and that the said deed of trust is fully satisfied, and your orator will procure a release thereof, which will hereafter be filed herein, marked "Exhibit 4";

Your orator avers that the said two notes bear date, August 1st, 1904, because the original contract for the sale of the property herein referred to was made on that date, and that the said notes were executed and delivered to the said Young on that date, with the intention that the interest should be paid thereon from that date until paid, and that for some reason, through no default of your orator, the deed conveying said land was not executed, and delivered until the 15th day of February, 1905; your orator is informed, believes and charges, however, that he is entitled to the principal of both of the said notes, and interest thereon

from the first day of August, 1904, and that this Honorable Court will correct said deed in this particular;

Your orator avers that neither the said W. B. Nickels nor any one for him has paid to your orator, or anyone for him, any portion of the said deferred purchase money, nor the interest thereon, and that the said two notes, with interest from August, 1st, 1904, are now due and owing to your orator, as aforesaid; and your orator avers that the said W. B. Nickels is still the owner of the said property and interests in property conveyed by the said deed of February 15th, 1905, but your orator states and charges that there are, or may be, parties interested in the subject to be herein disposed of whose names are unknown to your orator.

In consideration whereof, and in as much as your orator is remediless in the premises, save in a court of equity, your orator prays that the said W. B. Nickels be made a party defendant to this bill and be required to answer the same, but not under oath, the oath being hereby expressly waived; that all proper orders and decrees may be made, inquiries directed, and accounts taken; that all proper process issue; that on a hearing a decree may be rendered in favor of your orator, requiring the said W. B. Nickels to pay to your orator the sum of \$1000.00, with interest from August 1st, 1904, or if this Honorable Court should hold that interest should be paid only from February 15th, 1905, then from that date, until paid, and for costs of this suit; that your orator may be decreed to have a prior lien on all lands and interests in lands conveyed by the aforesaid deed of February 15th, 1905, and that the said lien may be foreclosed and the said lands sold, and for all such other further and general relief as may be proper and suitable to the nature of your orators case.

And your orator will ever pray, etc.

Bullett & Co.
John W. Chalder
p. q.

Wm. M. Young,

By Counsel.

State of Virginia :
: to-wit:
County of Lee :

William M. Young, complainant in the foregoing bill, being duly sworn, says that the facts and allegations therein-stated are true, except those stated on the information of others, and that so far as they are therein stated to be upon the information of others, he believes them to be true.

W M Young

Taken, sworn to and subscribed before me, F. M. Clarkson, a Justice of the peace for the County and State aforesaid, in my county aforesaid, this 16th day of October, 1906.

F M Clarkson
Justice of the Peace.



\$ 500⁰⁰—

Big Stone Gap, Va. Aug. 1st 1904.

Twelve months after date I promise
to pay to the order of Wm Young
Five hundred _____ Dollars

with interest at 6 percent per annum after maturity date.
Negotiable and payable at the office of Interstate Finance & Trust Company,
Big Stone Gap, Va. We the maker and endorser of this note hereby waive all
benefit of the homestead exemption law and we also waive presentment, protest and
notice of dishonor.

W B Nickels

Due _____

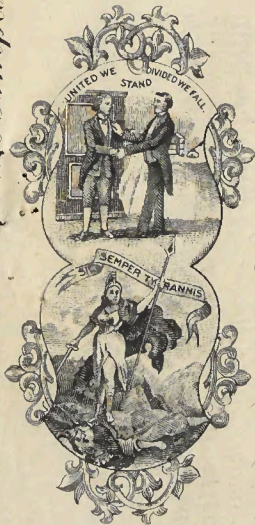
No. _____

15427

Exhibit No. 3 with Bill
in case of Young &
Mrs. Nichols in District
Court.

This note is not to be
collected until the
died & trust against
the land is satisfied.
Wm Young.
Filed 2nd Oct Rule, 1906.
Jes. Young, Clerk

The endorser, drawers, and makers
of the within note severally waive pre-
sentment for payment, protest and notice
of protest and non-payment of same, and
guarantee payment on demand after
due, and waive the benefit of their home-
stead exemption as to this debt.



\$ 500.00

Big Stone Gap, Va. Aug. 1st 1904.

Six months after date

I promise

to pay to the order of Wm Young

Five hundred

Dollars

with interest at 6 per cent per annum after maturity. date.

Negotiable and payable at the office of Interstate Finance & Trust Company, Big Stone Gap, Va. We the maker and endorser of this note hereby waive all benefit of the homestead exemption law, and we also waive presentment, protest and notice of dishonor.

Due

No.

W B Weeks

5428

Exhibit No. 2 with Bice
in case of Wm. Young v. W. S.
Nicasio, in the Circuit
Court.

Filed 2nd Oct Rule, 1906.
A. C. S. Young, Clerk.

The endorser, drawers, and makers
of the within note severally waive pre-
sentment for payment, protest and notice
of protest and non-payment of same, and
guarantee payment on demand after
due, and waive the benefit of their home-
stead exemption as to this debt.

N. M. Young

v. } Bill in Chancery

W B Nichols

Filed 2nd Oct. R., 1906.

H. C. T. Ewing, Clerk.

1906 2nd Oct Rules

Bill filed, & a
executed & D. N.,
1st Nov. Rules

"
D. N. confirmed &
cause set for hearing

Costs:

Clerk	\$13.55
Atty.	15.00
Deft	1.50
Printer	4.50
Shff.	1.00
R. P.	18.16
Estimated	5.00
	<hr/>
	\$58.71

TO THE HONORABLE H.A.W. SKEEN, JUDGE OF THE CIRCUIT
COURT FOR LEE COUNTY, VIRGINIA:

The separte demurrer and answer of W.B. Nickels to a bill exhibited in your honor's court against him by Wm. Young, for demurrer thereto respondent says said bill is not sufficient in law and not waiving said ~~bill~~ demurrer, but still insisting thereon, respondent says that it is not true that the complainant was siezed of the tract of land in question on the 15th. day of February 1905, but respondent alleges that on the 1st. day of August, 1904, complainant had delivered possession of said tract to him in persuance of ^{or} ~~pay-roll~~ ^{parcel} contract between respondent and complainant.

Your respondent further alleges that prior to the 1st. day of August 1904, that the complainant showed him the boundary of land which he proposed to sell respondent and in the presence of witnesses pointed out to him the boundary lines of said tract of land, and the respondent alleges that the boundary as pointed out to respondent embraced a certain spring on the South side of the said tract of land, when in fact the boundary embraced in deed delivered the 15th. day of February, 1905, does not embrace said spring.

Respondent alleges by reason of said false representation he is damaged at least Three Hundred (\$300.00) Dollars.

Your respondent would further show unto your honor that at the time complainant pointed out to respondent the boundary of land which he sold him, he represented said boundary to contain One Hundred and Seventy-five (175) acres, when in fact said boundary contains only One Hundred and Sixty-seven and Eighty-four One Hundredths (167-84/100) acres, and respondent alleges that it was upon the basis of said tract or boundary containing One Hundred and Seventy-five (175) acres and embracing said spring, that he agreed to pay complainant the sum of Four Thousand (\$4,000.00) Dollars, Three Thousand (\$3,000.00) Dollars of which sum was paid in cash

(2)

on the 1st. day of August, 1904, and One Thousand (\$1,000.00) Dollars was to be paid as soon as complainant could clear up his title and make respondent a good and sufficient deed for the boundary shown and sold respondent.

Your respondent alleges that he is damaged by reason of shortage in the acreage of said tract of land in the sum of at least Two Hundred (\$200.00) Dollars.

Your respondent most emphatically denies that it was the intention and understanding that the notes mentioned in complainant's bill, were to bear interest from the 1st. day of August, 1904, but respondent alleges that it was the express agreement and understanding that said two notes were not to bear interest until complainant was in position to make a clear deed and did make and deliver a good and sufficient deed for said tract of land to respondent.

Your respondent further alleges that in addition to the delivery of the boundary of land as pointed out by complainant to him, respondent was to have the right to cut all timber under 12" on a certain tract of land containing about 30 acres adjoining tract sold respondent, and respondent alleges that said Young had no right or title to said timber thus sold respondent and respondent had been deprived of this timber and he alleges by reason of this fraudulent and false representation on the part of complainant he is damaged at least in the sum of One Hundred (\$100.00) Dollars.

Respondent would further show unto your honor that on the 20th. day of February 1904, complainant executed his four several notes to W.S. Mathews, as Special Commissioner, one for the sum of Sixty-eight Dollars and Twenty-eight cents (\$68.28) and three for Two Hundred and Eight Dollars and Twenty-eight Cents (\$208.28) each, and to secure which said complainant executed a trust deed to R.T. Irvine, ^{as Trustee} on the tract of land

sold respondent, and respondent alleges that it was the agreement between complainant and him that respondent was not to pay off the two notes mentioned in complainant's bill, until this deed of trust was satisfied either by respondent paying the same off and getting credit on said two notes for this amount or for complainant to pay same off if he could. But respondent denies that complainant paid any part of the notes secured by said deed of trust but on the contrary thereof respondent paid same off as follows:

On the 20th. day of December 1904, respondent paid to W.S. Mathews, Special Commissioner, the first note of Two Hundred and Eight Dollars and Twenty-eight Cents (\$208.28) and the note of Sixty-Eight Dollars and Twenty-eight Cents, which with the interest to December 20th., 1904, amounted to the sum of Two Hundred and Ninety Dollars and Thirty-eight Cent (\$290.38).

Your respondent would further show unto your honor that on the 17th. day of March, 1906, he paid to said W.S. Mathews, Special Commissioner, the two remaining notes of Two Hundred and Eight Dollars and Twenty-eight Cents, (\$208.28) which with their interest to the date of payment amounted to Four Hundred and Sixty-Eight Dollars and Forty-One cents (\$468.41).

Your respondent would further show unto your honor that *Said William Young is indebted to him in* ~~that he has obtained judgment against complainant before a Justice of peace for Lee County in the sum of One Hundred and Ten Dollars, (\$110.00) for a store account which complainant~~ *goods wares and merchandise* owed your respondent and respondent alleges that no part thereof has been paid. *and he here offers to set off the same against an equal amount of the Plaintiffs demand against him*

The premises considered your respondent prays that this, his answer, be treated as a cross-bill and that the said complainant be required to answer same, but answer under oath is hereby expressly waived. That upon hearing

(4)

hereof your respondent ^{gum a} be decreed ^{for} against complainat whatever
sum or sums, may be found due respondent by reason of damage
suffered by him from complainant's false representation and
by reason of the sum he has paid out for and on the behalf
of said plaintiff, and judgement plaintiff is due him, and
for all such other further relief as to equity belongs
and is suited to his case.

And as in duty bound he will ever pray etc.

H J Horsley
H A Matthews

Wm. M. Young
Surrendered or
is answer of

W. B. Nichols

Filed Nov. 28, 1906.

H. C. J. Ewing,
Clerk.

Filed Feb. 18, 1907.

H. C. J. Ewing,
Clerk.

To the Honorable Hall Skeen
Judge of the Circuit Court of
Lee Co Va.

The further and amended
answer of W B Nickels to a
bill exhibited against him
in your Honors Court by
William Young, in addition to
matters pleaded in respondents
former answers.

Your respondent alleges and charges
that there are various liens and
judgments against the complainant
of record in Lee Co Va, and
especially the lien of T. O Berry
for the sum of \$600⁰⁰ with
interest thereon from May 12th
1890 subject to credit of \$300⁰⁰
also the judgment lien of
Ransom Buffalo vs Wm
Young for the sum of \$333³⁴
with interest thereon from
Aug 23rd 1890. a certified
manuscript of which is filed
herewith marked exhibits
one and two.

Your respondent further alleges
and charges that these liens
have not been paid and
are a cloud upon ~~the~~ ^{the} title
to the lands purchased by him
from Wm Young, and that
complainant promised and
is bound under his deed of

2

General Warranty and
covenants therein to remove
these incumbrances before
respondant is required to pay
the two notes sued upon or
any part thereof.

The premises considered your
respondent prays that said
complainant be required
to answer same, but answer
upon oath is expressly
waived and that the com-
plainant be required to
~~answer same~~ obtain proper
reliefs for the said judg-
ment lies before obtaining
any judgment upon the
notes sued upon and for
all further and general
relief that to equity belongs
and is suited to his case
and he will so pray &c

W.B. Nickels

W.S. Matthews

W.J. Horsley pd

Mr Young
vs
M.B. Nichols

Further answer

Filed Feb. 18, 1907-

A.C.J. Ewing,
Clerk-

Exhibit One

Name of Attorney.	In what court or before what Justice judgment was obtained.	Names of Parties.	Residence.	Amount of Judgment.	From what date interest begins.	Costs.	Credits to which Judgment is subjected, if any, and the date.	When Docketed.
	Circuit Court of Wise County Dec. 4, 1901. April Term, 1893.	J. D. Berry, Plff. vs. J. In Chy Wm Young, Deft.		600.00	May 12 1890	\$ 25	Aug. 27 1892 300.00	Decr. 4, 1901.

VIRGINIA==In Lee County Court Clerk's Office:

I, H. C. T. EWING, Clerk of said Court, do certify that the foregoing is a true copy of a Judgment in favor of J. D. Berry against Wm Young, as appears of record on Judgment Lien Docket No. 4 page 24 of Lee County Court, and that the same is properly indexed in the name of Wm Young said defendant.

Given under my hand this the 18th day of February, 1907.

Teste:

H. C. T. Ewing Clerk.

Exhibit Duv

Name of Attorney.	In what court or before what Justice judgment was obtained.	Names of Parties.	Residence.	Amount of Judgment.	From what date interest begins.	Costs.	Credits to which Judgment is subjected, if any, and the date.	When Docketed.
	<i>Circuit Court of Ransom Buffalo, Plff.</i>	<i>vs. J. H. Chy.</i>		<i>\$33334</i>	<i>Aug 23, 1890</i>			<i>Decr. 4, 1901.</i>
	<i>Wise County</i>	<i>Wm Young, Deft.</i>						
	<i>April Term,</i>							
	<i>1893.</i>							

VIRGINIA==In Lee County Court Clerk's Office:

I, H. C. T. EWING, Clerk of said Court, do certify that the foregoing is a true copy of a Judgment in favor of *Ransom Buffalo* against *Wm Young*, as appears of record on Judgment Lien Docket No. *4* page *28* of Lee County Court, and that the same is properly indexed in the name of *Wm Young* said defendant.

Given under my hand this the *18th* day of *February*, 190*7*

Teste:

H. C. T. Ewing Clerk.

Circuit Court of Lee County, Virginia.

William M. Young, Complainant,

v.

In Chancery:

W. B. Nickels, Defendant.

Answer of William M. Young to Cross Bill filed herein.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court of Lee County, Va.

Respondent says that it is true as set forth in the answer and cross bill of said defendant that he delivered to the said W. B. Nickels on the 1st day of August, 1904, the possession of the said boundary of land and the rights in other lands fully set out in his said ~~origi~~ original bill, and respondent denies that said boundary included said spring as alleged in said cross bill, but that the rights in said spring were explained to the said Nickels at the time, and that the said Nickels was shown the line of the said boundary showing that it lay below said spring; and respondent denies that he made any false or fraudulent representations with reference to said spring or with reference to the total acreage of said boundary whatsoever to said Nickels, and ~~that~~ denies that he has suffered any damage whatsoever on account of any such representations; respondent says that said Nickels never relied upon him for the acreage of said land, but that said Nickels ascertained and knew the acreage of said land and the location of said spring outside of said boundary from the agents and attorney of the ~~said~~ Keystone Coal & Iron Company, and examined their map of said boundary before agreeing upon the trade with respondent; and respondent denies further that he made any false or fraudulent representations with reference to the timber rights on the adjoining 30 acre tract, and denies that said Nickels has suffered any damage on account thereof.

Respondent says that the facts with reference to all of these matters are as follows: Respondent had for some time been in litigation with the Keystone Coal & Iron Company, a corporation, over the title to the said tract of land, and the said adjoining 30 acres, and other matters,

and for some time prior to his said trade with the said Nickels negotiations of compromise had been pending between respondent and said Keystone Coal & Iron Company, and said Nickels was advised of this fact,

and proposed to buy said tract of land and said rights in said spring and said adjoining tract from respondent and to take respondent's place in said compromise, and agreed with respondent to pay him the sum of \$4,000.00 therefor, and to complete the negotiations of compromise with said company; and respondent and his attorney and the said Nickels and the Hon. R. T. Irvine, attorney for the said Keystone Coal & Iron Company, had a meeting at which the final terms of compromise were agreed upon and approved by the said Nickels, and the said Nickels requested respondent to let him, the said Nickels, look after the preparation of the deed from the said Keystone Coal & Iron Company to respondent, and said Nickels did take the matter up fully with the attorney of the said Keystone Coal & Iron Company, and examined their map and survey showing the location of the said boundary of land and the location and acreage thereof, the location of the said spring, the location of the said 30 acre tract, and the rights of the said Young and of the said Nickels therein, the rights of said Young and Nickels in and to the said spring, and the mineral, mining and other rights of the said company in, on and under the said boundary of land, and approved the said deed from the Keystone Coal & Iron Company to respondent as drawn by said attorney;

Respondent says further that it was understood and agreed that he was to convey to the said Nickels the same rights in said boundary with the same exceptions, the same rights in said spring and the same rights in said 30 acre tract as he got from the said Keystone Coal & Iron Company, all of which were fully known to the said Nickels; and that the said Nickels at his own request procured the said R. T. Irvine, attorney, to prepare the said deed from respondent to the said Nickels, examined the same and the said map and said survey, and had the said attorney to fully explain to him the whole and full situation, and approved the said deed, before the same was ever presented to this respondent to be

executed by him and his wife, and that when respondent learned that said deed was satisfactory to the said Nickels he and his wife without having had anything to do with the preparation of the said deed but relying on the said Nickels to see thereto executed and delivered the said deed.

With reference to the said notes referred to in said cross-bill executed by this respondent to W. S. Mathews, Special Commissioner, secured by deed of trust on said boundary of land to the said R. T. Irvine, Trustee, respondent says that he is informed and believes it to be true that said Nickels did pay said notes to said W. S. Mathews, Special Commissioner, but said Nickels well knew when said cross bill was written that he paid the said note of \$68.28 and the said first note of \$208.28 with their interest before he paid any part of the purchase money for said land, and that said amount was deducted from the cash consideration of \$3,000.00 expressed in said deed; that said purchase money was not paid as a matter of fact either on the 1st day of August, 1904, or on the 15th day of February, 1905, but was paid some time subsequent thereto, to-wit, in April, 1905; and the said Nickels was to and should have paid the balance of the said purchase money so ~~the~~ respondent could pay the two remaining notes to the said Mathews, Special Commissioner, and this the said Nickels promised to do; in fact respondent was greatly damaged by reason of the payment by said Nickels of the said notes direct to the said Mathews, Special Commissioner, because, ~~the said~~ respondent was entitled to an offset as against certain of the parties in interest on said notes, and respondent was damaged in the sum of \$150.00 by reason of said Nickels' wrongful payment on said account. ~~XXXXXXXXXXXXXXXXXXXX~~

Respondent says that the allegation in said cross bill that there was an intention and understanding that the notes mentioned in complainants bill were not to bear interest until complainant was in position to make a clear deed, etc., and not to bear interest from August 1st, 1904, is wholly and absolutely untrue; that respondent and said Nickels discussed this matter between themselves; and both were advised that if the said Nickels did not pay interest, then he should pay rent to said

respondent from August 1st, 1904, when he took possession of the said property, at least, up to the time he made said cash payment, to-wit, about April, 1905, and it was then, to-wit, some times subsequent to April, 1905, that the notes were actually executed by the said Nickels to respondent, and the endorsement was written on the 6 months' note "This note is not to be collected until the deed of trust against the land is satisfied", and the said Nickels then and there delivered the said notes to respondent with the promise that he would pay same and interest thereon according to the face and tenor of the said notes with the exception of the said notation. Respondent is informed and believes that the said deed of trust has been satisfied by the payment on March 17th, 1906, by the said Nickels to the said Mathews, Special Commissioner, as set forth in said cross-bill; and when said payment is properly proven respondent says that the same should go as a credit on said purchase money notes herein sued on.

Respondent denies that he is indebted to said Nickels
~~Respondent says that it is untrue that said Nickels has obtained a judgment against respondent before a justice of the peace in Lee County for the sum of \$110.00 or for any other sum on a store account or any other account. Respondent says that it is true that said Nickels did sue respondent before a justice of the peace, but that the case was removed to the Circuit Court of Lee County, and that no action has since been taken therein. Respondent says that he has interposed a valid defense against the said debt, and is advised and charges that said claim so unliquidated and unsettled can not be dragged into this cause to bolster up a fictitious defense.~~

Respondent says further that said Nickels has at divers and sundry times promised to pay the said debt herein sued for and the said notes as written together with their interest, without making any such claims for damages, and has had this respondent and his attorney try to help him borrow money with which to pay same, stating that if he could borrow the money he would immediately pay the debt; and respondent is informed, believes and charges that said Nickels has given it out in statements that he is making said claims for the purpose of delay and hindering this

respondent in collecting his just debt, and to give him, the said Nickels, time; and respondent charges that such is the real purpose of said Nickels in making said defenses.

Respondent further denies every allegation of said answer and cross-bill not hereinabove specifically admitted. ^x

And having fully answered said cross bill, [^]respondent prays that same may be dismissed, and that your respondent may be afforded all the relief prayed for in his said original bill;

And respondent will ever pray, etc..

Blackley & Bullitt
Kelly

~~Attorneys for respondent.~~

W. M. Young

x For answer to the so called supplemental answer and crossbill complaint and denies that he is indebted to defendant for goods wares and merchandise in the sum of \$110.00 or in any other sum. And denies that there are any judgments or other liens against his complaint which are unsatisfied or which are liens on the land in controversy.

Further answering respondent says that the judgments referred to in the answer have all been fully paid and respondent desires that any of them and liens on said land

Bullitt & Kelly &
Blackley Attys for Young

Wm M. Young

vs. { Pass to cross-
bill and supple-
mentary bills

W. B. Nickels

Filed Feb. 18, 1907.

H. C. Ewing,
clerk.

To the Honorable H. A W. Skeen, Judge of the Circuit Court for
Lee County Va.

The further answer of W B. Nickels to a bill exhibited in your

honors court against him by William Young. *In addition to matters
pleaded in respondents answer former answer*
Your respondent alleges that the said William Young is justly

indebted to him for the sum of one hundred and ten dollars
with interest thereon from 1906 for goods wares and

merchandise sold to said Young at his request and no part
of same has been paid.

Your respondent further alleges that there are several
liens and encumbrances upon the lands sold respondent by
complainant, especially the trust deed given by complainant
to R T Irvine trustee to secure debts due W S Matthes, Com-
missioner and others, and that no deed of release has ever
been obtained for same.

*Your respondent further alleges and charges
that he is informed that there are various
liens and judgments against W B Young affecting*

The premises considered your respondent prays that this his
supplemental answer be treated as a cross bill and that the
said complainant be required to answer same by answer under
oath is hereby expressly waived. That your respondent be allowed
in addition to relief prayed for in original answer, the full
amount of the one hundred and ten dollar merchandise account
due your respondent from complainant, and that before your
respondent be required to pay complainant any sum what ever
that complainant be required to obtain release deeds for the
liens upon the lands in question, and that the matter
be referred to a commissioner to ascertain the liens and en-
cumbrances placed on the lands in question by complainant, and
for all other further relief as to equity belongs and is
suited to this case, and he will ever pray &c.

W B Nickels

W S Matthes

H J Hordley pd

Am Young

W.B. Nichols

Supplemental Am

Filed Feb. 18th, 1907-

H.C.D. Cwing,
Clerk-

W. M. Young - - - - - Plaintiff,
Vs. In Chancery.
W. B. Nickels, - - - - - Defendant.

This cause came on this day to be heard upon the papers formerly read therein and the report of Geo. P. Cridlin, Special Commissioner, filed in the cause on the 5th day of August, 1907, and was argued by counsel:

On consideration of all of which, and there being no exceptions to said report of the said Commissioner Cridlin, it is therefore adjudged, ordered and decreed that said report be, and the same is hereby approved and confirmed;

And it appearing to the Court from the report of said Commissioner that the defendant has settled and paid off the judgment obtained against him by the plaintiff in this cause, and that the plaintiff has paid over the said Commissioner Cridlin the costs of this suit as taxed by the Clerk of this Court, and that the same have been properly disbursed to the parties entitled thereto by said Commissioner; and there appearing nothing further to be done in the cause, it is further adjudged, ordered and decreed that the same be stricken from the docket.

W. M. Young
vs. { In Chy.

W. B. McKels

Deere Trial

Entered in C.O.B.
#8, page 304.

Enter this Deere
Sept 16 1907.
H. A. W. 511111

CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

W. M. YOUNG,

vs.

W. B. NICKELS.

O R D E R .

This day came the defendant herein, by counsel, and by leave of court, and by consent of complainant, by his attorney, withdrew his off-set heretofore pleaded herein for \$110.00, with interest thereon from 1906, for goods, wares and merchandise claimed to have been sold to said complainant.

And this cause came on to be heard upon all of the other issues made by the pleadings herein, and upon the papers formerly read herein, and upon the depositions of witnesses, and was argued by counsel:

On consideration whereof the Court doth adjudge, order and decree that the complainant recover of the defendant the sum of \$1,000.00, with interest from August 1st, 1904, until paid,,subject to a credit of \$468/41 as of March 17, 1906; and that he likewise recover of the said defendant his costs in this suit expended; and it is further adjudged, ordered and decreed by the Court that the complainant has a lien on the land in the bill mentioned for the aforesaid sum and interest, subject to the credit as aforesaid, and for the said costs, and that unless the said debt, interest and costs is paid to the plaintiff by the defendant, or some one for him within thirty days from this date, George P. Cridlen , who is hereby appointed a Special Commissioner for the purpose, shall, after having advertised the time, place and terms of sale, by pub-

lishing the same for two weekly issues in the Jonesville Star, and by notice posted for not less than ten days before the date of sale, at the front door of the Court House of Lee County, proceed to sell, at the front door of the said Court House, at public auction to the highest bidder the said land upon the following terms, namely: for one third cash, and balance payable in one year from date of sale, for which deferred payment he shall take the note of the purchaser, and the title to the said land shall be retained as security therefor until a conveyance shall have been ordered by the Court.

Before proceeding to act hereunder, the said Commissioner shall execute bond before the Clerk of this Court in the penalty of Fifteen Hundred Dollars (\$1500.00), conditioned upon the faithful discharge of his duties as said commissioner.

And the said Commissioner shall report his actions hereunder to this Court.

It is further ordered that the plaintiff may also have execution for the aforesaid debt, interest and costs.

And this cause is continued.

M. M. Young
vs. J. Olsen
W. B. Nickels

Entered in CO. B.
#8, page 283 v.

Enter this
May 21/07

~~H. A. C. S. I. C.~~

Judge

CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

WM. M. YOUNG,

vs.

D E C R E E .

W. B. NICKELS.

This cause came on to be heard upon the bill and exhibits filed therewith, and, thereupon, defendant asked leave to file his original answer and cross bill herein which was placed with the Clerk on the 18th day of November, 1906, which leave was granted him, and the said answer and cross bill accordingly filed; and the defendant, also, by leave of Court filed what is styled on the back a "Supplemental Answer", to which the defendant filed exceptions, and the same having been argued by counsel, the Court sustains said exceptions and strikes out of the said supplemental answer that part thereof commencing with the words "your respondent further alleges" down to and including the words "William Young affecting these lands;" and thereupon the defendant filed a further and amended answer and cross bill, and the complainant thereupon replied generally to the defendant's answer, supplemental answer and amended answer, and filed an answer to the original cross bill, supplemental answer and cross bill and amended answer and cross bill; and the defendant replied generally to the answer of the plaintiff to the said cross bill.

And this cause is continued.

Wm. M. Young.

vs. Deere

H. B. Nickels

Enter

2-18-1907

Harry A. Keen

CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

W. M. Young,

v.

W. B. Nickels.

Lis Pendens.

The object of this suit is to recover judgment against W. B. Nickels for \$1000.00 with interest thereon from August 1st, 1904, and the costs of suit, and to foreclose the vendor's lien retained in the deed of February 15th, 1905, from W. M. Young and wife to W. B. Nickels, upon a certain tract of land thereby conveyed, lying in the Wild Cat Valley, containing a net acreage of One hundred and sixty seven and eighty four one hundredths (167.84) acres, and on certain rights and interests in another certain tract of land conveyed in said deed, containing ~~three~~ ^{thirty} ~~hundred~~ acres.

The estate of W. B. Nickels is intended to be hereby effected.

*Bullet Valley,
New Stanley,*

P. q.

Virginia, Lee County, to-wit:

In the Clerk's Office of Lee County, on this the 17th day of October, 1906. This Lis Pendens was presented, and admitted to record.

Teste: *H. C. T. Ewing,* Clerk.

Young
vs.
Mekale

10/17/06.

Recorded in D.B.
44, page 585 vs.
Examined Oct. 18, 1906.

Indexed.

Cost \$1.25

CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

WM. M. YOUNG,

VS.

D E C R E E .

W. B. NICKELS.

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And this cause is continued.

Thm. M. Young.

vs. Decees.

W. B. Nickels

Entered in C.O.B.

#8, page 252 vs.

Enter

H. A. W. Siker

2-18, 1905

The depositions of Mrs. W. M. Young, R. T. Irvine, W. M. Young and Will Christian, taken before me, G. L. Taylor, a Notary Public for the County of Wise, pursuant to the notice hereto annexed, at the Office of Bullitt & Kelly, in the Town of Big Stone Gap, on the 23rd day of April, 1907, between the hours of nine o'clock a. m. and six o'clock p. m., to be read as evidence in behalf of the plaintiff in a certain suit depending in the Circuit Court of Lee County, Virginia, wherein W. M. Young is plaintiff and W. B. Nickels is defendant.

P R E S E N T: W. S. Mathews and W. J. Horseley, attorneys for defendant and W. B. Nickels in person, and Jno. W. Chalkley, of counsel for ~~the~~ Plaintiff, and W. M. Young in person.

Mrs. W. M. Young, a witness of lawful age, being first duly sworn deposes as follows:

Q. You are Mrs. Fannie R. Young, wife of complainant in this cause, are you not?

A. Yes, sir.

Q. And are over twenty one years old?

A. Yes, sir.

Q. Mrs. Young, do you remember when your husband gave Mr. W. B. Nickels possession of the place in Wild Cat Valley sold to him?

A. Yes, sir, I remember very distinctly. The 1st of August, 1904.

Q. What possession was given to Mr. Nickels at that time and what possession was retained by you?

A. We gave him entire possession of the lands and everything except the house. We kept possession of the house until the first of April, 1905.

Q. There is a controversy in this cause as to the location of a line of the said tract of land below, or above, or near a certain spring. State whether or not you heard Mr. Nickels say anything about his knowledge of the location of this line, and if anything when?

A. I heard him tell Mr. Young about the line. He came down and said that he had found the line up there, and Mr. Young asked him if it was where some bushes had been cut lately. He said it was. Mr. Young then said that was where they had been surveying the railroad line, and that the line was a little above there.

Q. About how far below the spring was this line?

A. Well, I don't remember exactly. I could not say--don't suppose it was over--might be two hundred yards or less. I could not say.

Q. If you remember please state when the deed from Mr. Young and you was executed and delivered to Mr. Nickels?

A. On the first day of April, 1905.

Q. Please state what Mr. Nickels said, if you heard him say anything about the preparation of the deeds concerning this tract of land, and when you heard him make any such statements?

A. Well, I don't remember, only when Mr. Young showed him the deeds, that is, the Keystone deed.

Q. That is, the deed from the Keystone Coal and Iron Company to Mr. Young?

A. Yes, sir. He showed him that and told him to read it.

Q. Do you remember when this was?

A. That was in 1904, in the winter, some time I think perhaps about February.

Q. February of 1904 or 1905?

A. February of 1905.

Q. Did you, or not, hear Mr. Nickels say anything about who was preparing the deed from you to him?

A. Yes, sir, I heard him say that Mr. Irvine was preparing the deed.

Q. Where and when?

A. Well, that was--I could not tell exactly the date. It was after we had given him possession down there, sometime in the fall.

Q. Sometime in the fall after you had given him possession?

A. Yes, sir, sometime after that.

Q. Please state, if you know, when the notes given for the deferred purchase money from Mr. Nickels to Mr. Young were executed and delivered by him?

A. I think it was in June, 1905. Sometime in June.

Q. Mrs. Young I will ask you if you ever heard any conversation between Mr. Young and Mr. Nickels, or ever heard any statements by Mr. Nickels about paying the said deferred purchase money notes, and if so, what he said?

A. Mr. Nickels and his daughter, Miss Lizzie, came down to our house in Turkey Cove and spent the day, the latter part of May or the first of June, 1906, and after dinner I came out on the porch where they were, and Mr. Young said he was going to help Mr. Nickels borrow the money to pay off that payment; and Mr. Nickels said he wanted to get enough to pay us off. I heard no complaint then of anything?

Q. Did you or not at that time hear any complaint about any timber or deficiency in acreage, or the location of the spring or anything of that sort?

A. I did not--nothing was mentioned.

Q. Do you or not know anything about a sale of fodder by Mr. Young to Mr. Nickels?

A. Yes, sir. I remember very distinctly about the fodder.

Q. Please state what you know about this transaction?

A. He sold Mr. Nickels the fodder Mr. Gilliam had cut up for him. Mr. Young had paid \$5.00 for having it cut up, and sold it to Mr. Nickels for \$12.00. He said he would sell it to him reasonable.

Q. Do you know whether or not he sold him any other fodder?

A. Yes, he sold some other fodder--top fodder; but I don't remember what he got for that--I never paid any attention to that.

Q. Please state if you know anything about the settlement for this fodder, whether the same was made or not, that is, each lot of the fodder?

A. Well, I don't remember about the top fodder. I just heard Mr. Young say that he sold him that. I don't remember just how much he got for that. I helped him keep the account, but I don't remember how much it was. I remember about the other.

Q. Do you know whether or not Mr. Young was ever paid for the cut up fodder in any settlements between them?

A. No, he was not. That was not settled for.

CROSS EXAMINATION by Judge W. S. Mathews, of Counsel for Defendant.

Q. Mrs. Young you said that the reason you knew he never paid for the fodder was because you heard Mr. Young talk about it quite often?

A. Yes, sir.

Q. That is the only reason that you know^{over} of is it?

A. Yes, sir. I never known of any other. He always told me it had not been settled for.

Q. Mr. Nickels might have paid it to Mr. Young and you not know it?

A. I helped him keep the account. I think I would have known of it.

Q. All you know about this is what you heard Mr. Young say, is it not?

A. Yes, sir, that is all.

Q. About the price of the fodder being \$12.00 --
All you know about that is what Mr. Young told you is it not ?

~~Q.~~ A. Well, I don't know. I don't remember whether I was present when he sold him the fodder or not. I can't tell exactly.

Q. How many shocks were there of the cut up fodder?

A. One hundred and twenty five, I believe.

Q. How many bundles were there of the top fodder?

A. I don't know anything about that.

Q. Did I understand you to say that you got this \$12.00 from what Mr. Young told you that he and Mr. Nickels had agreed on?

A. They had agreed on \$12.00 was what Mr. Young told me he was to have for the fodder, but he never got it.

Q. Didn't Mr. Young pay Mr. Gilliam \$5.00 for work in shucking the corn, and other work there?

A. No, sir. He paid him \$5.00 for cutting up this corn. He paid him \$5.00 cash.

Q. Was not that also for shucking?

A. No, I never heard anything about the shucking. I thought it was a good deal at the time, but he said there was a good deal

of it, and it took him a good bit to cut it up.

Q. I believe you say Mr. Nickels and his daughter came down to your house in the latter part of May, or first of June, 1906. Was that to your home down in Lee County.

A. Yes, sir.

Q. That was in 1906.

A. Yes, sir. Last summer.

Q. And at that time you heard Mr. Young say in Mr. Nickels presence that he was going to borrow the money for Mr. Nickels and let Mr. Nickels pay off the note to him?

A. Yes, sir.

Q. Did you hear all of the conversation that took place?

A. Well, I did not hear all of it. They mentioned that to me after dinner when we were all out on the porch.

Q. You say you heard no complaint. You don't mean to say that you heard all of the conversation that took place there between Mr. Nickels and Mr. Young do you?

A. No, I did not hear it all--but they mentioned about that.

Q. All you heard them mention was about borrowing money to pay the notes off?

A. Yes, sir. He wanted to pay the notes off and ~~gax~~ give a deed of trust for the money.

Q. Was not Mr. Young talking about borrowing some money to pay off some debts that he owed at the same time?

Question objected to by Mr. Chalkley, Attorney for plaintiff, because immaterial and irrelevant.

A. Well, I did not hear anything about that. I did not hear Mr. Young say anything about that.

Q. Whereabouts were those notes executed and delivered Mrs. Young?

A. That was at Oreton.

Q. What time did you say that was?

A. That was in 1905, I think in June perhaps.

Q. Now were those notes executed and delivered before or after the deed?

A. After the deed was written.

Q. Were you present when these notes were delivered?

A. Yes, sir. Mr. Nickels came by our house.

Q. The deed that Mr. Nickels mentioned as seeing in Mr. Irvine's Office, that was the deed from the Keystone Coal and Iron Company to Mr. Young, was it not?

A. Yes, sir.

Q. Please state what the conversation was that you heard in which you say that Mr. Nickels said Mr. Irvine was preparing the deed?

A. Well, Mr. Young told Mr. Nickels to read the deed, and he said that he had read it in Mr. Irvine's Office, and that Mr. Irvine was preparing the deed.

Q. Well, now I believe in answer to a question in your examination in chief, you say that Mr. Nickels said Mr. Irvine was preparing a deed from you and Mr. Young to him.

A. Yes, I heard him say that. That he was having the deed prepared--having Mr. Irvine to prepare the deed.

Q. ~~That was in 1905, I believe?~~

Q. When was that conversation had?

A. That was in 1905, I believe.

Q. What time of the year?

A. Sometime in November. In the winter of 1905. February, I think. I am not sure.

Q. I believe the deed was not delivered until about the
first of April?

A. Yes, sir, on the first day of April.

Q. Do you know who did prepare the deed?

A. I do not know. I suppose Mr. Irvine prepared it. That was what Mr. Young and Mr. Nickels told me--that he was preparing the deed, and Mr. Bullitt made some changes. I heard Mr. Young tell Mr. Nickels something about that.

Q. That was the deed from the Keystone Coal and Iron Company to you?

A. I don't know about that. Some changes about fencing a right of way. Mr. Bullitt changed that.

Q. Did Mr. Bullitt or Mr. Chalkley change the deed from you and Mr. Young to Mr. Nickels?

A. This was in that copy that Mr. Young showed to Mr. Nickels. After that Mr. Irvine prepared the deed. This was the copy of the Keystone Coal and Iron Company deed.

Q. You don't remember who did prepare the deed?

A. No, I could not say positively.

Q. Did you ever hear Mr. Young say that he would get Mr. Irvine to prepare the deed?

A. No, sir, I never heard anything said about it. Mr. Nickels was here in town, and Mr. Young was out on the farm. Mr. Young said that Mr. Nickels was having the deed fixed up--was what they told me.

Q. How long did you keep possession of the house?

A. Until the first day of April, 1905.

Q. You turned over the possession of the house as soon as you made the deed?

A. Yes, sir. Turned it over the day that the deed was delivered.

Q. *Young* Mrs. Nickels, I will ask you if Mr. Nickels pointed out to you or your husband the line he said he found up next to the spring?

A. He did not point it out to us. He said he found the line up there--was what he said.

Q. And that it was where some bushes were cut?

A. Yes, sir. That was where some bushes had been cut by the railroad company trying to get a better grade. Mr. Young told him the line was above there.

Q. Told him the line was above where the bushes were cut?

A. Yes, sir. A little above.

Re Direct Examination by John W. Chalkley, of counsel for plaintiff.

Q. Where were those bushes cut?

A. They were cut in the hollow below the spring, along above the barn and down below the spring.

Q. Was it pretty near to the barn where these bushes were cut?

Question objected to because leading.

Question withdrawn.

Q. Was it or not in near proximity to the barn where the bushes were cut.

A. Well, not very near the barn. There was two barns there-- Mr. Nickels had a barn. It was between the spring and the barn, I could not tell exactly. Perhaps half way, I could not tell.

Q. Was, or not, the line to which Mr. Young referred between the spring and the barn?

A. Yes, sir, that was the line referred to.

Re Cross Examination by Judge W. S. Mathews of Counsel for defendant.

Q. Do you know what bushes Mr. Nickels referred to?

A. Well, I suppose it was the bushes--these were the bushes that had been cut fresh there, and we supposed he referred to those.

Q. Were there not a lot of stakes set along there by the railroad company?

A. There were stakes along where the bushes were cut.

Q. Was there anything to indicate the direction which the line was running along there?

A. Well, I don't know whether there was or not--I could not say.

Re direct examination by John W. Chalkley of Counsel for plaintiff.

Q. Mrs. Young is it or not a fact that Mr. Nickels was about the place at various and sundry times, while the fence was being located on or near the true line, during the summer and fall of the year 1904, and before the deed from Mr. Young and you to him was executed?

A. Yes, sir. He was there frequently. He was there continually, staid with us and come in and eat meals with us very often.

Q. Do you know whether or not he knew where his hands were locating the fence on the true line?

A. Well I think he did. He heard Mr. Young say that he had instructed his foreman where to put the fence. He was afraid he would get above the line, and instructed him where to put it. I think Mr. Nickels knew because he was there.

So much of the foregoing answer as purports to give what Mr. Young said is objected to by Counsel for defendant.

Further this deponent sayeth not.

(Signature waived.)

The further taking of these depositions is continued until 1 30 p. m. at the same place.

Met pursuant to adjournment.

R. T. Irvine another witness of lawful age, being first duly sworn deposes as follows:

DIRECT EXAMINATION by John W. Chalkley, of counsel for plaintiff.

Q. Please state your residence, occupation, and say whether or not you are witness of lawful age?

A. Residence, Big Stone Gap, Va. Occupation, Lawyer.
Yes, sir.

Q. Are you or not Attorney for the Keystone Coal and Iron Company, and if so, did you as such attorney, negotiate a settlement for the said company and W. M. Young with reference to a certain tract of land in Wild Cat Valley?

A. Yes, sir. I am attorney for the Keystone Coal and Iron Company, and did negotiate the settlement of the matter referred to.

Q. Please state whether or not Mr. W. B. Nickels, the defendant in this suit, had anything to do with the final determination of the settlement between the Keystone Coal and Iron Company and W. M. Young, and if so, what?

A. I think he did. By refreshing my memory from the

original draft of the deeds between Mr. Young and the Keystone Coal and Iron Company and others, I find they were drawn as of April 15th, 1904, and I think from this fact that the original compromise agreement was made at this time. I could not fix a definite time from my independent recollection, but would say that it was about that time.

There was litigation about this land pending in Lee County and had been pending for ten or twelve years, and I was exceedingly anxious to get it settled, and took up with Mr. Young and his attorney, Mr. Bullitt, the terms of settlement, and we practically agreed upon them on or about the time indicated above, April 1904. One of the first troubles in closing the negotiations was to agree on the details of the minor rights that each party should have in the two boundaries of land. We easily made the general agreement that Mr. Young would take the cleared land, and the Keystone Coal and Iron Company and others the rest of the original boundary, and, also, the minerals and certain mining rights under the cleared lands.

Before I had closed up with Mr. Young all of these details, he told me that he had sold the land to Mr. Nickels, and that Mr. Nickels would have to be satisfied in the matter of these details, and thereafter, there were one or more conferences in my office between Mr. Nickels and myself, and between Mr. Young and myself, and also, one or more conferences in Mr. Bullitt's Office between Mr. Bullitt and Mr. Young and myself regarding these details. I do not recall just when the matter was finally closed, but my independent recollection is that it was something like a year latter than April, 1904. I suppose the deed from the Keystone Coal and Iron Company and others to Mr. Young will be in evidence in the cause, and will show when it was acknowledged.

It was on or about that time that the matter was finally concluded. I had a great deal of trouble getting the details worked out to the satisfaction of Mr. Nickels. After Mr. Young had sold to Mr. Nickels he took very little interest in the matter, except to satisfy Mr. Nickels, and from this time on as I remember my principle conferences about the matter were with Mr. Nickels, and the deed was finally drafted as I suppose to satisfy Mr. Nickels' demands.

By Mr. Bullitt:

Q. Did or not you understand from the parties that Mr. Young was selling to Mr. Nickels the exact interest which he got from the Keystone Coal and Iron Company, and that anything which was satisfactory to Mr. Nickels would be satisfactory to Mr. Young?

A. Yes, sir. I understood that from both Mr. Young and Mr. Nickels.

This question and answer is objected to by Mr. W. J. Horseley, of counsel for defendant, because the deed is the best evidence.

By Mr. Chalkley:

Q. When you speak of settling the minor details with reference to this trade, do you or not mean among other things, the location of, or interest in, a certain spring on or near the property in controversy in this case?

A. Yes, sir. The spring was one of the points of adjustment. That and certain timber rights for domestic use. But the principle trouble we had was in the matter of rights of way over the mineral land to get out timber and minerals from the uncleared portions of the original tract.

Q. Do you or not know when the survey of this tract of land was made by the Keystone Coal and Iron Company?

A. I could not fix the date, but it was made in the early part of the negotiations I referred to. In fact after a mere preliminary understanding between Mr. Young and myself nothing was done until a careful survey was made and a map turned in, and then, as I remember, we took up the matter again trying to adjust all of the details, basing them upon the map.

Q. Do you know whether or not Mr. Nickels had opportunity to and did examine the map referred to during the pendency of his negotiations with you?

A. I, of course, know nothing except what occurred in my presence. I think I have an impression that he and Mr. Young discussed in my presence certain facts which showed that they both had seen the map, and I think I can safely say that I had the map on at least one occasion, and perhaps more, with Mr. Nickels in my office talking the matter over with him. There was never any reason why Mr. Nickels could not see the map. It was open to his inspection always, and my best recollection is that he did examine it in my presence.

Q. Have you the said ~~map~~, or a blueprint thereof, and if so, will you kindly file the same with your deposition, marked "Exhibit Map"?

A. I looked for the map all day in my office at Mr. Young's request and could not find it. It was in my office for a long time, but I have not seen it for some time, and I cannot say where the copy is that I had. I would say, however, that Mr. J. L. McCormick, Agent of the Keystone Coal and Iron Company, would be very likely to have either my copy or an exact duplicate as he made

the original map. He is a civil engineer. I will look further and try to get a copy from Mr. McCormick and file it marked as requested above.

Q. What is your recollection of the timber rights which Mr. Young, and consequently, Mr. Nickels, was to get in the thirty acre tract adjoinign the tract conveyed to him?

Question and answer objected to because the deed is the best evidence.

Question withdrawn.

Q. Were, or not, these conferences about which you have spoken all made before the execution and delivery of the deed from Young to Nickels?

A. Yes, sir. I don't think any conversation or any conference ever took place after the deed was made, about the matter. That is my best recollection about it now.

Q. Have you or not any recollection about Mr. Young and Mr. Nickels having submitted to you a question of when the deferred purchase money notes, or from what date the deferred purchase money notes should bear interest?

A. I remember that matter being put up to me in some form, but I cannot say positively by whom. I feel pretty certain that Mr. Young once discussed it with me, whether Mr. Nickels was present, or whether Mr. Nickels ever discussed it with me, I cannot say. I have a very distinct recollection of thinking the matter over and concluding in my own mind and of telling whoever it was that was talking to me that if Mr. Nickels had possession of the land he ought to pay interest on the deferred purchase money from the time he got possession. That is about all that I recollect on that point.

2. Did, or not, in these conferences about which you have spoken, Mr. Nickels make any ~~complaint~~ claim that he should be entitled to a reduction from the amount of the purchase money on account of the right of way for the V. & S. W. Railway Company through the said boundary of land?

A. I think not. Nothing that I can recall.

CROSS EXAMINATION by Mr. W. J. Horseley, of counsel for defendant.

Q. Did I understand you to say that Mr. Young took very little interest in the getting up of the title after he had sold the land to Mr. Nickels, and had received three thousand dollars from Mr. Nickels?

A. I stated, I think, that Mr. Young took very little interest in the matter of details. He came to see me several times, and was interested enough in the matter of getting it finally closed up, but he stated to me all the while, that anything that was satisfactory to Mr. Nickels was satisfactory to him on the matter of these minor details he referred to.

Q. Do you know whether or not Mr. Young represented to Mr. Nickels at the time he paid the \$3,000.00 in August, 1904 and bought the land, that the spring and all the timber on the thirty eight acre tract was to be a part of the sale to Nickels, and that the tract contained one hundred and seventy five acres?

Question objected to by Mr. Chalkley, of counsel for plaintiff, because it assumes a statement of facts which the witness has not made, and which as a matter of fact are not true as shown by the deposition of the defendant heretofore given herein.

A. I did not hear any of the preliminary negotiations between Mr. Young and Mr. Nickels and know nothing about them except what little may have cropped out in our talks in my office latter on. They had traded before I knew there was any trade pending.

Q. Were you employed by Mr. Nickels as his attorney to write the deed from Young to Nickels?

A. I have no recollection of ever being employed for that purpose by Mr. Nickels, and I do not think I was, as I would probably have remembered it, and would have made some charge against Mr. Nickels for so doing, and I did not make any charge against him.

Q. You wrote this deed, did you not, from Young to Nickels?

A. Yes, sir. I had almost forgotten the fact that I did write it until my memory was recently refreshed about the matter; but I now recall having drafted deed, but my best recollection is that I did it under my employment for the Keystone Coal and Iron Company and others and in order to get the whole matter settled and off my hands.

By Judge Mathews.

Q. These details you referred to were embraced in the deed from the Keystone Coal and Iron Company to Mr. Young were they not?

A. Yes, sir. That deed was read over by me to Mr. Nickels and discussed at great length as I remember, and it was understood by him that these rights of Young were really for his, Mr. Nickels', benefit, and as I have said above Mr. Young stated more than once that it was immaterial to him what was put in the deed, so Mr. Nickels was satisfied.

Q. The Keystone Coal and Iron Company deed was prepared about a year before the deed from Young to Nickels was it not?

A. No, I think the deed, as finally agreed on, was drafted at or about the same time the deed from Young to Nickels was drafted. There was a draft of a deed made in April, 1904, which I now have before me. By comparing this deed with the deed as finally agreed on it will be seen that there are many changes and additions and elaborations which gives pretty well the history of the trouble we had, only we discussed a great ^{many} matters that were rejected and did not go into the deed.

Q. In drawing the deed from Young to Nickels you state that the deferred payments were to bear interest from the date of the deed. Do you have any recollection how you happened to put that ~~it~~ ^{for}?

A. I don't think I stated that, and in fact I don't remember at all what is in the deed on that point. I have not seen that deed since it was drafted, and do not know what it did provide on that point. If your question means that the deed states this ^{is} then I would say that the deed speaks for itself, and that I do not have an independent recollection on that point.

Q. Did you draw the notes that were executed by Nickels to Young for the deferred payments?

A. I have not the slightest recollection whether I did or not.

Q. Were these conversations that you refer to with Nickels and Young about the details of the deed made after the first of August, 1904?

A. I would think so, but I cannot fix definitely the dates. My impression is that there was a considerable interval after the

matter was first agreed on in a general way between Mr. Young and his attorney and myself, during which interval I think Mr. McCormick was surveying on the land and other matters were being attended to. I am sure I never had any talk with Mr. Nickels until after he purchased from Mr. Young.

"Q. Do you remember when the survey was made by Mr. McCormick?

A. No, I do not.

Q. Was it before or after the Nickels purchase ^{August} of 1904?

A. I could not say at all. I believe I could say that Mr. McCormick first presented the map and survey to me which was an extremely zigzag affair, running around with some fences. I had him go back and survey it over and cut out a lot of little angles and lines, and put the property into better shape. I do not remember just what the dates of these things were.

(Further this deponent sayeth not.

Signature waived.

MR. W. M. YOUNG, a witness of lawful age, being first duly sworn deposes as follows:

Q. By Mr. Chalkley of Counsel for defendant.

State your age, residence and occupation?

A. Fifty one years old, residence Lee County, Virginia.
I am a farmer.

Q. You are the plaintiff in this cause and have heretofore given your deposition herein have you not?

A. Yes, sir.

Q. When did you first ascertain the acreage of the tract of land sold by you to Mr. Nickels referred to in this suit?

The taking of this deposition and the answer to this question is objected to by counsel for defendant, because it should have been brought up in the examination in chief, that is, evidence in chief.

A. The first I knew of the acreage after the surveying was done, Mr. Nickels told me that Mr. Irvine had showed him the plat of the land, and he told me there was one hundred and sixty one acres, and I did not know any better until probably--well I don't remember exactly how long afterwards--I looked on the map myself, and saw that it was one hundred and sixty seven acres and a fraction.

Q. Please fix the date of this conversation with you and Mr. Nickels with reference to August 1st, 1904, or the time when you all traded? I think it was during the month of August? Was it before or after your trade with Nickels?

A. After.

Q. Please state whether or not this was a sale by the boundary or by the acre?

A. I understood the sale to be by the boundary.

Question and answer objected to by counsel for defendant, because this is a question of law and not a question of evidence.

Question withdrawn.

Q. Please state whether or not you and Mr. Nickels had any conversation ~~with~~ or conference with Mr. Irvine, attorney for the Keystone Coal and Iron Company, with reference to the rights to be put in the deed from the said company to you, and the deed from you to Nickels, and what was said, when and where, and what was the general understanding between you and Mr. Nickels?

A. I don't remember of having any conversation between Mr.

Nickels and Mr. Irvine. Me and Mr. Nickels discussed it and after we had agreed on the trade, these minor details, he rather took the matter in hand, and Mr. Irvine rather settled the matter with him, and when the questions were finally settled Mr. Nickels brought Mr. Irvine and came into Mr. Bullitt's office where I was awaiting them. Mr. Irvine made a statement in regard to the details and Mr. Bullitt asked me what I thought about it, and I told him that I thought that was about the agreement, and he asked Mr. Nickels and Mr. Nickels said that was all right.

Q. About what was the date of this last conference?

A. It was in the spring of 1905, I would say about the first of February--not far from the first of February.

Q. When was the deed from the Keystone Coal and Iron Company delivered to you?

A. It was delivered on the first day of April, 1905.

Q. When was the deed executed from you to Mr. Nickels?

A. I signed the deed that day.

Q. How did you get this last deed?

A. Mr. Will Carnes came out to Oreton where I was moving that day.

Q. Did he bring you both deeds or one?

A. Both.

Q. Was that or not the day you executed and delivered the deed to Mr. Nickels?

A. I did not deliver it that day, but in a few days.

Q. At or about this time, did you or not discuss the contents of either or both deeds with Mr. Nickels, and if so, what did you say about it.

A. There was not anything said about it. I delivered him the deed at night. There was nothing said.

Q. Did you or not offer to read or show the Keystone Coal and Iron Company deed to Mr. Nickels?

A. Mr. Irvine sent me a copy previous to the first of April and I asked Mr. Nickels to look at it, and he said that Mr. Irvine showed it to him.

Q. When were the deferred purchase money notes referred to in the deed from you to Nickels executed and delivered by Mr. Nickels to you?

A. It was either the last of May or the first of June, 1905.

Q. The deed from you to Nickels which is dated on or about February 23rd, 1905, refers to these two notes as of even date herewith, and the notes are dated August 1st, 1904. Will you please explain this discrepancy?

Question and answer objected to because the deed is the best evidence.

Question withdrawn.

Q. Mr. Nickels has stated in his answer that you pointed out to him the boundary lines of the said tract of land, and that the boundary as pointed out by you embraced a certain spring on the South side of the said tract of land, when in fact the boundary embraced in the deed dated February 15th, 1905, does not embrace said spring. Please state what you did show to Mr. Nickels and when, with reference to these boundary lines and the location of the said spring?

A. I never did point out the boundary lines to Mr. Nickels, and the information I gave him about the spring was about what he had put in the deed.

Q. Was or not Mr. Nickels on or about the premises and lines frequently between August 1st, 1904 and April , 1905.

A. Yes, he was there frequently.

Q. Mr. Nickels further contends in his answer that you sold him one hundred and seventy five acres of land, and that you conveyed him one hundred and sixty seven and eighty four one hundredths acres. Please state what you know with reference to this contention?

A. I did not know how many acres there would be until the surveying was done and the plat was made, and as I have already stated, I got my first information from him, and afterwards saw the plat myself.

Q. In his answer he further says that it was not the intention that the notes mentioned in your bill were to bear interest from the first day of August, 1904, but there was an express agreement that the said notes were not to bear interest until you were in position to make a clear deed, and did make and deliver a good and sufficient deed for the said tract of land. Please state what you know with reference to any such agreement, if there was one, and please state the facts with reference to such transaction?

A. I don't remember the time when we got into a sharp contention about the interest on the notes, but it was during the pending settlement with Mr. Irvine and the Keystone people, and we agreed to submit the matter to Mr. Irvine. I came and saw Mr. Irvine and put the question to him, and he said that the use of the land was equal to the interest on the money and that Mr. Nickels had as well sign the notes. I went back and told Mr. Nickels. I met him as he was going toward Oretan. I told him what Mr. Irvine said and he said it was all right, "I will come back by and sign them," and he came by my house and signed the notes.

So much of the foregoing answer purporting to state

what Mr. Irvine said not in the presence of Mr. Nickels objected to as hearsay evidence.--By Counsel for defendant.

Q. In his deposition Mr. Nickels stated that he was not exactly in his right mind when he executed these notes. I will ask you if he read the notes before he signed them, and whether or not you or anyone else used any undue influence over him to get him to sign the same?

A. I read the notes to him. I certainly did not use any hypnotic or other power over him. He signed them of his own free will with a clear understanding.

Q. Mr. Nickels likewise contends that you have no right to sell certain timber under twelve inches on a certain tract of land containing about thirty acres. I take it that you got what right you had to this timber under your deed from the Keystone Coal and Iron Company. Is this not correct?

A. That is correct.

Q. I ask you to file said deed with your deposition, marked "Keystone Deed"?

A. I will file the original or a certified copy of the said deed with this deposition marked as requested.

Q. When was the cash payment referred to in the deed from you to Mr. Nickels actually made?

A. It was actually made a few days after the first day of April, 1905. We settled by this paper. It is in Mr. Nickels own handwriting, giving an account of the different checks. He gave that to me the same night.

Q. At the time this cash payment was made, did or not Mr. Nickels make any contention about any damage to him on account of the location of the said spring?

A. He did not.

Q. Or any damage on account of the failure to get the timber off of the thirty acre tract he expected to get?

A. No, sir. He did not make any contention.

Q. Or on account of any shortage in acreage of the said tract of land?

A. No, sir.

Q. Or on account of the location of any of the said tracts?

A. No, sir, there was no objection made.

Q. Did he, or not, make any claim for damages, or other claim on any of these accounts when you delivered the said deed to him?

A. No, sir.

Q. Did he make any such claim at the time he executed and delivered the said notes to you?

A. No, sir, he did not.

Q. When did you first hear of the said claims on his part?

A. The first intimation I ever had if it was when I was in Mr. Chalkley's Office, and he told me that Mr. Nickels said that if I brought suit against him he would give me trouble, or something to that effect.

Q. Did, or not, you and Mr. Nickels have any conversation or agreement with reference to the payment of the said notes after they became due, and if so, what was it?

A. About the last of May or the first of June, 1906, Mr. Nickels and his daughter came down to my house in Turkey Cove and Mr. Nickels agreed that if I could borrow the money from Mr. R. L. Pennington that he would give him a deed or trust to secure him, and pay off the notes.

Q. Do you mean that if you could borrow the money, or if

you could arrange for him to borrow the money?

A. I mean that if I could arrange for him to borrow the money, and I went to Jonesville to see Mr. Pennington.

Q. Did he or not at this time make any claim of damages of the on any accounts above referred to, or any other accounts?

~~Mr~~ A. No, sir.

Q. Mr. Nickels in his answer says that he should receive credit for \$68.28 and \$208.28 on the 20th of February, 1904, and \$290.38 again on the 20th day of December, 1904. Mr. Nickels has further stated in his deposition that he was mistaken in this. It is true, is it not, that he did take credit for these payments in his settlement with you on cash payment?

A. Yes, sir.

Q. Is it or not true that Mr. Nickels should have credit for the \$468.41 as evidenced by the payment of two notes of \$208.28 on the 17th day of March, 1906?

A. Yes, sir.

Q. I will ask you whether or not there was any arrangement between you and Mr. Nickels with reference to the payment of these notes to Judge Mathews as Special Commissioner, and whether or not you were in any manner damaged by Mr. Nickels payment thereof or any part thereof?

A. I wrote Mr. Nickels once or twice that if he paid those notes to Mr. Mathews, I would lose nearly \$150.00. I called him up on the phone from Mr. J. M. Ward's and he said that he would not pay it--that he would pay it to me.

Q. Has, or not, the deed of Trust given by you to W. S. Mathews, Special Commissioner, been satisfied, and if so, when was it satisfied, and are you entitled to a release thereof?

A. Yes, sir, ~~he was~~ it was satisfied when he paid off those two notes.

Q. Are there or not any liens or debts against you which affect your title to the said lands?

A. No, sir, not that I know of.

Q. Mr. Nickels likewise claims in his answer a judgment obtained before a Justice of the Peace in Lee County against you for \$110.00. State what you know with reference to this account and said judgment, if anything?

A. I owe Mr. Nickels a store account which we have never settled on, and he brought action before a justice for \$67.91 and \$46.78. The \$67.91 he says in his notice was Nickels & Palmer, and the \$46.78 was W. B. Nickels. Some of the articles contained in that account for which he has sued before a Justice, and, also, filed the account in this case, have been paid, and this statement in his own handwriting shows it.

Q. Did he or not obtain any such judgment?

A. I don't think he has any judgment. I asked the matter to be sent to Court, and I have never heard from it since it went there. Mr. Nickels said he had a judgment, but I understand from the Justice that sent the account on.

Q. Have you or not any off set against the said account, and if so, what?

A. I am entitled to what has already been paid, of a small bill of goods that Mr. Nickels brought me from Big Stone Gap, flour 85¢, bacon \$1.00, coffee 17¢, and, also, \$12.50, or at least \$12.00 for the fodder, and \$3.00 for some manure that I bought from the Interstate Coal and Iron Company and turned over to him.

Q. Was there or not, any agreement between you and Mr.

Nickels that these items should be credited on the said store account?

A. Well, the reason that Mr. Nickels had not settled for the fodder we agreed to leave it to the man who cut the fodder how many shocks there was and it dragged along.

Q. Mr. Nickels in his deposition has stated that he paid you for some fodder. Please state what that was?

A. He paid me for three hundred bundles of tops with the blades tied in them--blades and tops; which is shown on Mr. Nickels' statement.

Q. The fodder you now speak of is in addition to the other fodder?

A. Yes, sir. It was the long fodder--cut up fodder.

Q. I will ask you to file the statement referred to by you as being in Mr. Nickels' handwriting, marked "Exhibit Statement", and file the copies of the notice of suit brought against you in Lee County before a Justice, marked "Exhibits Y and Z" with your deposition.

A. I file same marked as requested.

Q. Please state what you know of Mr. Nickels early knowledge of the lines of the land in question?

A. Well, me and Mr. Nickels never did go around the lines of the land. The only thing I ever heard him say about any line was the line below the spring. He came from the barn down to the house and told me and my wife that he had found where that line crossed the path, and I asked him if it was where the bushes were cut, and he said it was, and I told him that was not the line, that it was just a few feet ^{above} ~~below~~ that.

Q. Please state whether or not you made any false or

fraudulent representations at any time to Mr. Nickels with reference charged to any of the matters ~~which~~ in his answer and cross-bill; that is, with reference to the location of the said spring, with reference to the timber rights on the said thirty acre tract, with reference to shortage in acreage, or any other contentions therein mentioned?

A. If I did, I do not know it. In regard to the line that I have just spoken about, when Mr. Nickels foreman wanted to build a fence along the line, he came after me and I went with him and I found the rails piled up along the line, and I cited and he laid the fence worm; and occasionally I would go out to where he was laying the fence, and we had to move some of the piles of rails in order to get the fence as near the line as possible.

Q. When did you deliver possession of the said boundary of land to Mr. Nickels?

A. The first of August, 1904, except the house.

Q. When did you deliver him the possession of the house?

A. On the morning of the first day of April, 1905.

Q. What was the condition and character of the well at the said house?

A. I always regarded it as one of the finest wells that I knew of. I have tried different times to dip it dry but could not. But I had discovered after I sold to Mr. Nickels that the well had a tendency in trying to fill up. I think a surface stream broke in somewhere.

CROSS EXAMINATION by W. J. Horseley, of counsel for defendant.

Q. Mr. Young who prepared and wrote the deferred payment notes that you took to Mr. Nickels to sign?

A. My daughter after she came from South Carolina, she was

there teaching.

Q. Did I understand you to say that you sold Mr. Nickels the land without representing to him any certain number of acres or showing him any boundary lines?

A. I sold Mr. Nickels all I was getting from the Keystone Coal and Iron Company.

Q. At the time you sold to Mr. Nickels and received part pay had you any title or deed from the Keystone Coal and Iron Company?

Question objected to by Mr. Chalkley, attorney for plaintiff, because plaintiff, defendant, and all witnesses who knew anything about the case have shown that there was no part payment made when the original trade was made, and the question is misleading and mis-states the record when it so indicates.

A. I have been involved with this title, trying to collect purchase money since October 1889, until I affected this compromise that Mr. Irvine detailed today.

Q. When did you consummate the compromise with the Keystone Coal and Iron Company and receive a deed from them?

A. I think their deed was delivered on the first day of April, 1905, the same ~~the~~ day that I executed the deed to Mr. Nickels.

Q. Then you had sold this land to Mr. Nickels and received part pay before you received a deed for the land, had you not?

A. Yes, sir. He had paid me \$719.41.

Q. You had no other property out of which he could have made this \$740.00 if he had not taken this land had ^{you} ~~he~~?

Question objected to by Mr. Chalkley, Attorney for plaintiff, because irrelevant and immaterial.

A. Well, I had this East Stone Gap Land Up here--my interest in that.

Q. At the time that you say Mr. Nickels spoke to you about the line being below the spring where the bushes were cut, and you told him it was above the place he thought it was, was that after you and Mr. Nickels had traded?

A. It was in the same month after. I think that was about the last of August, 1904.

Q. Mr. Young, the records of Lee County, Lien Book 4m page 24, shows that Mr. T. D. Burry has a judgment against you for \$600.00, interest and costs, from 1904. Do you know anything about that?

A. That is settled--satisfied by cash payment.

Q. Will you please file your receipt and have same removed as a lien upon this land?

A. I will file a certificate from the Clerk of Wise.

Q. Also Mr. Ransom Buffalo has a judgment against you of record in Lee County, Virginia, for \$333.34. What about this?

Questions with reference to showing of Lee County records of judgments or liens against Mr. Young are objected to because they are irrelevant and immaterial.

A. The house and lot owned by Mrs. Rogers in the town of Big Stone Gap was sold to satisfy that debt.

Q. Will you please have the same released of record?

A. Yes, sir.

Q. This fodder that you speak of is the same fodder Charlie Collier testified about in his evidence is it not?

A. Yes, sir. I talked to Mr. Collier the other day and he told me that the fodder was in first class condition.

So much of the above answer as states what Mr. Collier has stated is objected to as heresay and irrelevant, by counsel for defendant.

BY JUDGE MATHEWS:

Q. What statement did you make to Mr. Nickels about the spring at the time you sold him this land?

A. I don't remember what statement I made. Me and Mr. Nickels were up at the Spring "I remember it as well as if it had been yesterday" after we traded, I told Mr. Nickels--I said--I made the company put in this spring.

Q. You meant by that that you got the spring in your trade with the Company?

A. I meant that I got the use of the spring from the Keystone Coal and Iron Company.

Q. You did not state to Mr. Nickels, however, that you only got the use of the spring, did you?

A. I did not. I said I made the company put in the Spring.

Q. What did you say to Mr. Nickels about the acreage of the land that you were proposing to sell?

A. I don't remember what I could have said about it until the calculation was made.

Q. Didn't you mention to him that you had at least one hundred and seventy five acres.

A. I don't remember saying anything to Mr. Nickels about the acreage.

Q. Didn't he ask you about how much you thought you had there?

A. Not that I remember of.

Q. Didn't you have some idea of the number of acres you had in this boundary?

A. Me and Mr. Irvine tried to estimate it by counting certain fields, but we only made it about one hundred and fifty acres, counting it what the fields were called.

Q. You thought you had more than that didn't you?

A. I didn't know--it was amatter that was left to the engineer.

Q. When was this land surveyed by the Keystone Coal and Iron Company?

A. It was surveyed--I don't remember the date--I remember the calculation was never given me until after I had sold to Mr. Nickels.

Q. Hadn't the lines been run before you sold to Mr. Nickels?

A. I don't know but that they did do some running. They were down there. They might possibly have done some running.

Q. You have no recollection of them doing any surveying after you traded?

A. Well, sir, I don't know.

Q. Were there no marked corners on the land by which the Keystone Coal and Iron Company made the survey?

A. No, sir, there were no marked corners. They made their corners as they went Mr. Mathews.

Q. What did they make their corners by?

A. They made them according to the terms of the compromise, and the corner stones were put up after I moved away from there.

Q. Were there no stakes?

A. I suppose there were, I did not go with the engineers.

Q. Did you see any of the surveying at all?

A. Yes, sir. I saw something of it, and I was with them at two or three different places.

Q. You say you showed Mr. Nickels ^{no} ~~a number of the~~ boundary lines. What did you show him when you went to sell him this land?

A. I sold him the land I was getting in the compromise from the Keystone Coal and Iron Company.

Q. Didn't you attempt to show him what this land was?

A. I did not.

Q. Didn't you tell him?

A. I told him I was getting the cleared land.

Q. You pointed out to him as best you could, didn't you?

A. Yes, sir, as best I could--told him about where it was.

Q. You said nothing about how much there was?

A. Not that I remember of.

Q. What was it you said about the timber on the thirty acres.

A. I said about the language of the deed, I think.

Q. What is your recollection of that?

A. That they were to have timber--my recollection is that it was to be timber under twelve inches, unmerchantable--under twelve inches--for domestic purposes.

Q. You would not construe that as only the dead timber under twelve inches?

A. ~~No~~, No, sir.

Q. You considered all timber under twelve inches as unmerchantable?

A. Yes, sir.

Question objected to because this is a matter of law, and is shown in deed and the deed speaks for itself. By Counsel for plaintiff.

Q. That is the way you represented it to Mr. Nickels when you made the trade?

A. Yes, sir. He was to have--that was the agreement that he was to have the timber under twelve inches.

Q. All of the timber under twelve inches?

A. I don't remember about the word "all" but my understanding is that they were to stop at twelve inches, and he was to have the timber from twelve inches down, was my understanding.

Re Direct Examination by John W. Chalkley, of counsel for plaintiff.

Q. Did you or Mr. Nickels agree with Mr. Irvine as to what timber rights you should have in the thirty acre tract--what timber rights the Keystone Coal and Iron Company should grant in the thirty acre tract?

A. I don't remember whether Mr. Nickels was present or not.

Further this deponent sayeth not.

(Signature waived)

Will Christian another witness of lawful age, being first duly sworn deposes as follows:

DIRECT EXAMINATION by Jno. W. Chalkley, of counsel for plaintiff.

Q. State your age, residence and occupation?

A. I am forty two years old--civil engineer--Big Stone Gap, Va.

Q. Did you survey a tract of land in Wild Cat Valley conveyed by the Keystone Coal and Iron Company to W. M. Young, and conveyed by W. M. Young to W. B. Nickels, and if so, about when did you survey it?

A. I did the chaining--Mr. McCormick run the transit--I did the chaining--I don't remember the time when it was done. I can't remember how long ago it has been since we did the work.

Q. Did, or not, Mr. Nickels shortly after this surveying was done ask you to see a map showing the result of such survey?

A. I don't know that Mr. Nickels asked me to show him the map. He came up and asked me how many acres there were in the boundary of land and I got the map and showed him. The number of acres was marked on the map, and I showed him the map and the number of acres that was marked on it--to the best of my knowledge.

Q. Did, or not, this map in addition to showing the number of acres show the location of the lines, the houses, out-buildings and a certain spring near the lines, and the lines of the thirty acre tract adjoining?

A. Yes, sir, it showed the lines of the thirty acre tract adjoining, and also, showed the division lines all around the property, and the outside lines of the whole thing, --showed the lines of the thirty acre tract--and the railroad line. I am not positive whether it showed the house and spring or not. Best I remember about it--I think it did.

Q. Did Mr. Nickels examine the map?

A. I don't know that he did particularly. I showed him the

~~Ex~~ number of acres. About all I remember was that he got the map and I showed him on the map the number of acres. I think I showed him on the map the number of acres that it called for in the boundary.

Q. Please state how long, as nearly as you can, after the surveying was done that this took place?

A. Well it has been so long that I don't know that I could get anywhere near it. It kindly strikes me that it was a month or so--best I remember. Might have been longer--might not have been so long.

Q. You are connected with the Keystone Coal and Iron Company still?

A. Yes, sir.

Q. Does the said company make any objection to Mr. Nickels getting timber under twelve inches in diameter for farming and domestic purposes from the said thirty acres?

A. Well I have not heard any objections from anybody for him getting firewood--there was something said about some posts--I think it was some locust posts--and that Mr. McCormick said something to Mr. Nickels about this. I never heard Mr. McCormick say what said to Mr. Nickels--I don't know that he did say anything--I know there was something said about it in some way.

Cross Examination by Judge Mathews, Attorney for Defendant.

Q. You are not in a position with the said company to grant Mr. Nickels any rights or privileges with reference to this timber, are you?

A. No, sir. I am not.

Q. What ever he gets with reference to the timber, he would have to get from Mr. McCormick, or through Mr. McCormick

A. Well, he has a right, and I don't suppose there would be anything said about him getting anything under the right which he has to get off there. Yes, if there should be anything said to Mr. Nickels about the timber, or anything like that, I would not have any right to do anything without instructions from the company. I would not do it unless they had instructed me to do it. I suppose I would have the right to say something to Mr. Nickels if I saw him cutting down their good timber.

Q. Do you remember what time of the year it was when Mr. Nickels came to your office to look at the map?

A. He came in the office. I don't know what he came in there for. I remember that he asked me how many acres there were in the tract of land he was getting from Young. The map was there. I knew at that time right where the map was and I looked over it to get the number of acres, and showed Mr. Nickels.

Q. Did you tell him the number of acres?

A. I told him the number of acres that the map showed. It was down in figures on the map.

Q. What did you tell him?

A. I dis-remember the number of acres now--there was some change--I don't remember what it was though.

Q. Do you remember whether that was in the winter or spring?

A. No, sir, I do not. Don't know when we did the surveying--whether in the winter, spring or summer.

Q. Who was living in the house on the Young place at the time?

A. We did some surveying twice. We went there and run the

lines out once and there was some question about this timber and the thirty acre tract that was laid off afterwards--and I don't know who was living in the house when we were first there; but the last survey, Mr. Young was living in the house. I remember distinctly about this--we put in a set stone right near Mr. Young's house, and he got us a mattock, or pick, to dig the hole to put in the stone.

Q. Did Mr. Young go along with you when you made the survey?

A. No, sir, I don't remember that he was with us anywhere at all except at that one corner. I am not positive whether he was with us anywhere else or not.

Q. Was there anything to mark the lines where you run there with reference to the spring?

A. Well, there was a corner just below the spring--stake and dogwood pointer--between the spring and Mr. Nickels' barn.

Q. Was there anything to indicate where the line ran from that dogwood pointer?

A. Well, there was very little--don't remember that there was anything much.

Q. Were there any bushes to cut?

A. Well--I don't remember, that there was any bushes to cut.

Q. A man would have to be pointed out the line to say whether it went above or below the spring?

A. I don't think he would. In coming into the dog-wood pointer below the spring, we had to cut some bushes to show where the line went.

Q. When was it you cut out those bushes?

A. I don't remember just when we run along there when we

we did the first surveying; but I think we came lower down the first time. There is a pond out there somewhere, and I think we came in about the corner of the field where Wells lives out in there, and it seems to me that we came down near the railroad at that point, then after which I think the line ran farther up the hill along that point--no I believe I am mistaken about that--the first line we ran through--we ran through the woods and we came through to the fence along there--Can't tell you--it has been so long--have forgotten.

Q. From your best recollection then you were running all over that country?

A. Yes, sir. We were running all along there.

All of the foregoing questions with reference to the ability to tell from the running of the lines and showing of the bushes objected to by counsel or plaintiff because scattering and immaterial and irrelevant.

Further this deponent sayeth not.

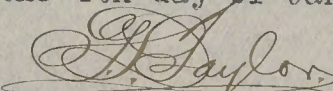
(Signature waived.)

VIRGINIA: WISE COUNTY: To-wit:

I, G. L. Taylor, a Notary Public in and for the County of Wise in the said State, do hereby certify that the foregoing depositions of Mrs. W. M. Young, R. T. Irvine, W. M. Young, and Will Christian were duly taken and sworn to before me at the time and place and for the purpose in the caption hereto mentioned.

Given under my hand this 27th day of April, 1907.

My commission expires on the 4th day of January, 1911.


NOTARY PUBLIC, Wise County, Virginia.

My Charges are 12 hrs at 75¢ per hour \$9.00

CIRCUIT COURT OF WISE COUNTY, VIRGINIA.

W. M. Young,

Plaintiff,

vs.

W. B. Nickels,

Defendant.

NOTICE TO TAKE DEPOSITIONS:

To W. B. NICKELS:

Take notice that on the 23rd day of April, 1907, at the Office of Bullitt & Kelly, in the Town of Big Stone Gap, Wise County, Virginia, between the hours of nine o'clock a. m. and six o'clock, p. m. of that day, the plaintiff in the above styled cause will proceed to take the depositions of Wm M. Young ~~John Hood, Fender~~ ~~Wood~~ and others, to be read as evidence in behalf of the undersigned, in the above styled suit depending in the Circuit Court of Lee County, Virginia, in which you are defendant and I am plaintiff, and if from any cause the taking of the said depositions be not commenced on that day, or if commenced, if they be not completed on that day, the taking of the said depositions will be adjourned and continued from time to time and place to place until they are completed.

Respectfully,

W. M. Young,

By Counsel,

Bullitt & Kelly,

Jno. W. Chalkley, p.q.

W.M. Young

} notice to take
} depositions

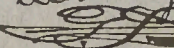
W.B. Nickels

Executed by delivering
a true copy of within notice
to the wife of W.B. Nickels in
Wise County at his usual
place of abode, he being not
found there and she being a
member of his family over
16 and giving to her full
information of the purpose
thereof, on April 19th
1907.

W.M. Young

State of Virginia, Wise County,
This day personally
appeared before me in my said
county W.M. Young who
made oath that the statements
contained in the foregoing
return are true.

Given under my hand this Apr.
23rd 1907


Notary Public

W. M. Young
vs.

W. B. Nichols

Depositions of Mrs W. M.
Young and others taken on
behalf of Plaintiff

Filed May 9th, 1907.

N. C. D. Ewing,
Clerk.

= 1 =

Wm Young Dr
To W. B. Nichols-

1905.

march 27	to meat	\$1.00
" 28	" flour	.85
April 10	" one bushel of potatoes	.50
" 11	" peaches	.12
" 15	" oil	.10
" 19	" coffee	.37
" "	" one pair shoes	3.00
" "	" pepper	.05
" "	" one lamp	.35
" 26	" soda	.05
" "	"	.05
" "	" coffee	.15
" 29	" dishes	.85
may 3	" merchandise	1.18
" 19	" coffee	.72
" 20	" merchandise	1.45
" 23	" leather and sprigs	.13
" "	" order by Johnson	.45
" 25	" sack of chop	1.50
		<u>\$12.87</u>

1905	amount transferred from page one	\$12.87
May 27	to merchandise	1.35
" 29	paid Mr Hyatt	2.00
" "	to meal	.45
" "	" cambric and thread	.40
June 12	" merchandise	.20
" 18	" "	.30
" 27	" one bag of crown flour	.75
" "	" prical and broom	.47
" 29	" lard	.45
July 1	" two packages of coffee	.36
	" sugar	.50
	" eight pound of bacon	1.00
	paid Emma Johnson	.25
6	to soap + gold dust	.15
	" bleech	.50
	" pop	.05
	" meat	.37
	" coffee	.18
	" bleech	.50
	" sugar	.60
	" apples	.25
	" sugar	.20
	" coffee	.35
	paid Lula Burton	.45
		<u>\$25.05</u>

1905	amount transferred from page two	\$ 25.05
july	to sugar	1.20
	" coffee	.18
	" merchandise	.35
	" soap	.05
	" meat	1.06
	" lard	.37
	" merchandise	.80
	" sugar	.50
	paid Razor	.30
	" one barrel of flour	6.25
	" meat ⁴⁴ + meal ⁴⁵	1.11
	" broom + sugar	1.55
	bal on plates + coffee	.20
	meat	.87
	to sugar and soap	.10
	" oil	.10
	paid Hood	.50
	to tablet	.05
28	to coffee ¹⁸ 18 , shoes + hose ³¹⁰ , pins ⁰⁵	3.33
aug 18	" meal	.45
" 27	" oil	.10
" 31	" meat	1.08
Sept 4	" coffee	.18
		<hr/> \$ 45.73

W. M. Young; Dr
To W. B. Nichols.

Wm Young, Dr.,
To W.B. Nichols, & co.

1905

Oct. 17	to coffee	.17
" "	" Mrs L. N. Collier order	.50
" 19	" $2\frac{3}{4}$ yard of gingham	.21
" "	" $1\frac{3}{4}$ " " "	.17
" "	" domestic + thread	.27
" 21	" two packages of coffee	.34
" "	" one " " soda	.05
" 23	" outing	.70
" 30	" 10 yards of serge cloth	1.00
" "	" $2\frac{1}{2}$ " " flannelette	.25
" "	" 5 " " bleech	.50
" "	" order by Ward	2.00
" "	" one shawl	.75
" "	" handkerchief	.20
" "	" cloth	.50
" 25	" leather + sprigs	.55
" 26	" meal + meat	.85
" 27	" cloth + thread	.12
" "	" rain coat	6.00
		<hr/> \$15.15

1905	amount transfered from page 1	\$15.15
oct 28	to lamp oil	.10
" 30	" L. N. Collier order	.50
" 31	" flour	.80
" "	" coffee	.18
" "	" sugar	.15
" "	paid to boy	.05
nov. 2	to envelopes	.10
" "	" lard	.65
" "	" salts	.05
" 4	" sugar, four packages	.60
" "	" turnips	.12
" "	" quinine	.10
" 7	" sugar	.15
" "	" one package of oat meal	.10
" 8	" meal	.45
" 8	" coffee	.35
" 10	" flour	.85
" "	" outing	.35
" "	" order by Jenn Ranny	1.00
" "	" beef, 11 pounds	1.10
" 12	" to order by Mrs Collier	2.00
" "	" oat meal	.10
" 13	" soap & tablet	.15

 \$25.15

1905	amount transferred from page three	\$132.84
Dec 2	to tablets	.10
" 5	" envelopes + coffee	.28
" "	" lard ⁶⁰ , meal ⁴⁵ , soda ⁰⁵	1.06
" 6	" order by Johnson, Dated Dec 1	.20
" 7	" hair pins	.15
" 9	paid Geo. Johnson	.20
" "	to flour, salt, soap and oat meal	1.00
" "	" cash	10.00
" 11	" coffee	.18
" 12	" meal	.40
" 14	" meat, soap + sugar	.30
" 18	" order by L. M. Collier	.50
" 19	" quinine + envelopes	.15
" 20	" meal	.45
" 23	" order by L. M. Collier	.50
" "	" soda	.05
" "	paid G. W. Johnson	.10
" 24	to goods	.77
" 29	"	5.45
" "	" order by Geo. Johnson	.10
" "	" matches	.10
" "	" meat	1.76
" 31	" flour	1.60

\$58.30

1905	amount transferred from page four	58.30
Dec 30	to boy and string	.12
" "	shoes oil + thread	2.30
" "	to meat sugar + oatmeal	1.05
1906		
Jan 5	to hog	2.50
" "	paid to Hobbs	.50
" "	" " H.D. Parrett	4.85

~~\$~~ 69.62

~~\$~~ 45.73
 115.35

Total amt.

Mistake of 120

120

\$115.35

" Jk. M. Young, Jr.
No. W.B. Nickel, & Co.

Filed with W.B. Nickel,
deposition in the case
from Young to W.B.
Nickel - motion

Notice to take Depositions.

[Code §§3359-68; 4 Min Inst. (2ed.), 745 & seq.; 2 Dart Chy. Prac. (2ed.), p 783 & seq.; Hurst's Guide & Manual, p. 16 & seq.]

To

Wm Young

Take notice, that *I* shall, on the *23* day of *July*, 190*7*, at

in *Office of W S Matthews*
Big Stone Gap, between the hours of *9* A. M., and

6 P. M., on that day, proceed to take the depositions of *C Collier*

W B Nichols
and others, to be read in the evidence in *my* behalf, in a certain suit in equity depending in the

County court for the county of *Log* wherein you are

Complainant and *I* *Def*

and, if, from any cause, the taking of the said depositions be not commenced on that day, or, if commenced, be not concluded on that day, the taken of the same will be adjourned and continued from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

Respectfully yours,

W B Nichols
by Counsel

[When parties live within a convenient distance, five day's notice usually given, is although less may suffice. In other cases, ten to fifteen days will not be too much—4 Min. Inst. (2nd ed.), 1647.]

• Service of the within notice
is hereby accepted to have
same of force, and as no
other, as if served on
the plaintiff.

Bushell & Kelly
Attys for Blff.

The Depositions of *W B Nickels*, *C. C. Collier*
and *H. K. Palmer*
taken before me *W B Cairnes* a notary Public of Wise Co Va

~~taken~~ at the law office of W S Matthews in the town of Big

Stone Gap Va between the hours of 9 A M and 6 P M Feby 23rd 1907

pursuant to notice hereto attached, to be read as evidence

in behalf of the defendant in a ~~ceratin~~ suit in chancery

pending in the Lee County Circuit court wherein Wm Young

is plaintiff and W B Nickels defendant..

By agreement of council the taking of these depositions are
continued until March 23rd 1907 at the same place and between
the same hours.

W B Cairnes
Notary Public

Mes

Pursuant to adjournment, at the Office of W.S.Mathews, in Big Stone Gap, Wise County, Virginia, on the 23, day of March 1907.

W.B. Nickles, Notary Public

PRESENT:

W.M.Young, plaintiff, and J.W.Chalkley his Attorney, and W.B. Nickles defendant, and W.J.Horsley and W.S.Mathews, his Atty.

W.B.Nickles, a witness of lawful age, being first duly sworn deposes and says.

Q-1. What is your name, age, occupation and place of residence.

A-1 Name, W.B.Nickles, age 49, occupation, farmer, place of residence, Big Stone Gap, Virginia.

Q-2. Are you the defendant in this suit?

A-2. Yes sir.

Q-3. Did you purchase a tract of land from William Young on or about August 1904, and if so state all about said purchase

A-3. Yes sir. I bought a tract of land down there about 175 acres.

Q-4. How much did you pay for the land?

A-4. About \$4,000 for the tract.

Q-5. How did you make the payments?

A-5. Well I paid him some checks I think before he delivered the deed, I believe it was about \$700.00, then I think I paid some notes to Mr. Mathews about \$700.00, and I think I gave checks of \$2200 and something, and I think before the deal I paid him \$700.00, I forget the amount, then I give him when he delivered the deed two checks to the amount of 2200 something one on this bank and one on the Norton bank. I paid him \$3,000

Q-6. You paid the amount of checks and money \$3,000 at the time you got the deed.

A-6. Yes sir.

Q-7. How were the other payments to be made?

A-7. Well from the time we made the trade it was some time till I got the deed, and the balance of the money I gave him notes for it. If the notes had ~~been~~ of been given at the time we made the trade, but I never got the deed for a long time after I gave the notes.

Q-8. How much did you give him your note for?

A-8. one thousand dollars.

Q-9. How much each?

A-9. \$500.00 each

Q-10. Have you paid all of the notes?

A-10. No, I never paid all of them, but I paid off a mortgage.

Q-11. What was the amount of the mortgage.

A-11. \$460.00

Q-12. Was this to be credited on either of these notes?

A-12. Yes sir.

Q-13. From what time were these notes to bear interest?

A-13. Well they were due in six and twelve months. I gave him my notes at the start, but it was a year or over before we got the deed made.

Q-14. When was the notes to commence bearing interest?

Question objected to, because the notes themselves are in evidence, and shows when the interest begins.

A-14. Well it was ^{not} to bear interest until the deed was made. Objected to for the reason given above, and because the witness attempts to state a legal conclusion only.

Q-15. Did I understand you to say that these two notes were to bear interest from the date that the deed was delivered to you.

Question objected to as leading the witness, and because he personally states that the notes were made at the time the trade was made, which he said was in August 1904.

A-15. I was to give the notes as soon as the deed was made

Q-16. State whether or not there was any mistake in the deed from W.M.Young to you, about the time the notes were to bear interest, or was ~~that~~ part of the deed stated correctly the time from which the notes were to bear interest?

A-16. The deed ~~wouldn't~~ ^{was not} the way it ought to of been. It ought to of been from the time the deed was made.

Q- 17. I her show you the deed, read it and see what it says about this.

A-17. This deed recites exactly the date the notes were to bear interest from. The way I understand it the notes were give in 1904, in August, and the notes not to draw any interest until the deed was made.

Q-18. State whether or not the deed contains all the land you contracted for in your contract of August 1904?
Objected to because incompetent.

A-18. No sir.

Q-19. How much was omitted?

A-19. Omitted eight acres and a fraction.

Q-30. What was that worth per acre?

A-30. Well I counted it about \$23.00 per acre.

Q31. In your answer you state that the fact that Mr. Young, at the time he sold you this land sold you also some timber

A-31. Yes sir, he sold me thirty acres from 12 inches down

Q- 32 Did you ever get that timber?

A-32. No sir.

Q-33. What was that timber reasonable worth.

A-33. About one hundred dollars.

Q34. In your answer you set up the fact that the original contract embraced the spring, which was omitted in the deed?

A-34. Yes sir, Mr. Young showed me the line ran above the spring

Q35. How much do you consider you are damaged by reasoning of failure to get the spring?

A35. I think I am damaged \$100.00.

Q-36. In your answer you set up the fact that you have a store account against William Young. State if this is true, and if so, what amount you have against him.

Question objected to because this is an ^minliquidate damage arising out of another transaction, and can properly be brought in to show this case.

A-36. Yes sir.

Q-37. How much?

A-37. I think it is was \$1,15.00. ^{115.00}

I now hand you an itemized statement of account against W.M.Young, furnished by W.B.Nickles and W.B.Nickles & Company, marked W.B.Nickles & Company against W.M.Young, again and ask you to file this as a part of your deposition?

A-37. Yes sir, I herwith file the same.

Q-38. State if this account is correct, and if you are now the owner of the account of W.B.Nickles & Company.

A-38. Yes sir.

Q39. Has any part of this been paid?

A-39. No sir.

The filing of this account is objected for the reason above stated, and for the further reason that the account shows that it is not the original entry, ^{there is} ~~and has~~ no proof of the books of original entry.

Q40. State whether or not the account was taken from the books of W.B.Nickles and W.B.Nickles & Company?

A40. Yes sir.

and whether or not the same is a true copy taken from the said books.

A-40. Yes sir.

The \$290.38 paid to W.S. Mathews, Special Commissioner, on the 20th. of December 1904, as set up in your answer, and the payments on the \$500.00 notes. I will ask you to state whether or not this ought to go on the \$500.00 notes or was it included in the payment of the \$3,000 above mentioned.

A- 41 No, it was in the payment of the \$3,000.

And was put in your answer by a mistake.

Yes sir.

Q-42. I see from your answer that you claim that you paid W.S. Mathews, Special Commissioner, on the 17th. of March 1906, the sum of \$468.41?

A-42. Yes sir.

Q-43. State whether or not this should go as a credit on the \$500.00 note?

A43. Yes sir.

Q 44. Who was present when Mr. Young pointed you out the boundary of land at the time you made the contract in August 1904.

A44. Nobody I don't think.

Q45., What caused the delay in the deed?

A945. I do not know what was the reason.

Q46. Was Mr. Irvine employed as Your Attorney in getting up this deed.

A46. No sir.

The deed referred to is the deed from William Young to you?

Yes sir. There was something said to Mr. Irvine about the deed about getting up the deed, but I do not know whether I said anything about it or not.

CROSS EXAMINATION BY CHALKLEY.

Q-47. Mr. Nickles when were you put in possession of the boundary of land in question?

A-47- Some time in August.

Q-48- What year?

A-48. 1904.

Q-49- What part thereof were you not put in full possession

A-49. Mr Young was in possession of ^{the house} it and cut some timber.

Q-50. What kind of timber.

A-50. Just some young growth that grew up in the fall, in the fields

Q-51. When did you first begin to clear and build the barn and fence?

A-51- We commenced the barn in December, I think it was.

Q-52. When were you put in full possession of the land?

A-52. I could'nt state when.

Q-53. What is your best recollection of this?

A-53. I forget?

Q-54. Was it in the year 1904, that is all of the land except the house?

A-54. I dont recollect when it was.

Q-65. Do you decline to state any recollection about this?

A-56. My recollection was some time in January 1905.

Q-57. What was the agreement in the original contract as to the length of the time Mr. William Young was to have possession of the dwelling house?

A-57. Well he was to keep the house for the year 1905, if he wanted to, but I do not know whether he stayed his time out or not.

Q-58. Isn't it a matter of fact he gave it up in April 1905?

A-58. He give it up some time ^{about} in then.

Q-59. What was the date of the cash payment of the \$3,000, and when was these payments made?

A-59. I dont exactly recollect what time it was.

Q-60. Give your best recollection?

A-60. I think it was in April, about the 3, 1905.

Q-61. When ^{were} was the two notes for \$500.00 each exactly executed?

A-61. I think they was executed the day I gave the checks for the cash payment.

Q-62. Did you examine these notes before you executed them?

A-62. Yes, I did, I told him they ~~wouldn't~~ ^{were} the way they ought to be.

Q-63. Did you not know at that time they were dated as of the date of the original contract, that is as of August the first 1904?

A-63. No sir, I didn't, as I thought they were dated in 1904, and I never paid much attention to the notes, only they ~~wouldn't~~ ^{were} the way they ought to be.

Q-64. In what manner were they wrong?

A-64. I told him the notes ought to of been as the deed was made the same date.

Q-65. To refresh your recollection, isn't it a fact that the notes were not executed the day the cash payment was made, and you and Mr. William Young differed about the time they were to bear interest, and agreed to leave the matter with Mr. Irvine?

A-65. No sir, I dont think we did.

Q-66. And didn't you understand from Mr. Irvine that ^{it} the notes were ^{not} to bear interest and ~~he would see if they were wrong,~~ ^{then you should pay rent for} ~~the land~~ ^{from August 1904}

A-66. No sir.

Q-67. Well then why did you sign them as written?

A-67. Well I just signed them, but I told him they were not the way they ought to be.

Q-68. When you signed them you were in full posession of your reasoning faculties, were you not?

A-68. No ~~sir~~, I was bothered.

Q-69. Did Mr. Young use any Hypnotic or other influence

over you to cause this?

A-69. No sir.

Q-70. As I understand you now, you didn't claim credit on the purchase money notes, of all the amounts you paid to Judge W.S. Mathews, Special Commissioner, and ^{only claim the} one of \$468.41, paid March 17, 1906, that is you now acknowledge that the early payment, ^{was accounted} ~~you accounted~~ for in the cash payment.

A-70. Yes sir.

Q-71. When the original contract was made between you and Mr. William Young, as of August the first 1904, did Mr. Young then tell you how much the boundary contained?

A-71. Yes sir, he told me the boundary contained 175 acres.

Q-72. Did you at that time know that the V.&S.W. RAILWAY COMPANY had a right-away through this farm?

A-72. Yes, but I didn't know that there was taken out that much beside the other.

Q-73. Didn't you know when the land was run out and surveyed

A-73. No sir, I don't know when it was.

Q-74. Have you no idea about this?

A-74. No sir.

Q-75. Well, ^{was} were there any surveying on it after you bought it.

A-75. Not that I know of.

Q-76. There never ^{were} any surveyors on it after you bought it in 1904?

A-76. I do not know of it.

Q-77. Did Mr. Young show you all of the lines when you first made the trade?

A-77. He told me about where they were.

Q-78. Did you all go around the lines?

A-78. Not exactly, at different places and come to the lines. And did you not go along the line next to the spring, mentioned in your deposition?

A- 78. As we wnet up there he told me that the line ran above the spring.

Q-79. Now did'nt Mr. Young show that exact line?

A-79. No sir, never did.

Q-80. When was the first time he showed it to you?

A-80. When we trading and he said the line ran above the spring, and I seen the stakes there after ~~and~~ they ran below the spring, but he told me the line ran above the spring.

Q-81. He did'nt show you the line above the spring?

A-81. He did'nt show me them but he said they was above the cleared land.

Q-82. Did you not see where the line crossed the road below the spring?

A-82. I seen the two stakes, but I did'nt know which went above or on the other side of the branch.

Q-83. State when you first knew of the correct line?

A83. About the time Charlie Collier was making the fence above the barn.

Q84. About what time of the year.

A-84. About December some time in 1904.

Q-85. That then was ^{before} the time you made the cash payment and ^{had} executed the notes?

A-85. Yes sir.

Q-86. What rights have you in said spring?

A-86. All theright we have is for the farming and drinking.

Q-87. What use do you make of the said spring?

A-87. Drinking purposes.

Q-88. Have you in any manner been interrupted in the use of said spring?

A-88. No sir, we have been using it for family use.

Q-89. Was there not a well at the house when you bought the place.

A-89 Yes sir.

Q-90. Why did you not use said well?

A-90. We did use it some. It would of done all right for a small family but it would not of done for a family like mine.

Q-91. How large a family have you?

A-91. About eight of us. for a small family it is all right.

Q-92. I will ask you if you ever went over the lines on the map with R.T.Irvine ^{Mr. Irvine} prepared for the Keystone Coal & Iron Co.

A-92. No sir.

Q-93. Mr. Irvine never showed ^{you} the map of the property?

A-93. I seen the map of it but I never seen the line.

Q-94. Were not the lines on the map?

A-94. I never saw them then.

Q-95. What did you see when you saw the map,

A-95. I saw the map.

Q-96. Did the map show the acreage of the property?

A-96. I never noticed it.

Q-97. When was this that he showed you this map?

A-97. After we traded.

Q-98. Why did you get Mr. Irvine to look about this matter?

A-98. I was in there and he was talking about the trade, and he said he was glad I bought it.

Q-99. Can you recollect about when this was?

A-99. No sir, I do not know.

Q-100. Did this map show the right-away through the place.

A-100. I never noticed.

Q-101. Did Mr. Irvine tell you the acreage of the tract when you saw this map.

QA-101. No sir.

Q-102. When did you first learn of the actual acreage in this tract?

A-102. Mr. Christan told me.

Q-103. When was that?

A-103. Well, that was I believe in December 1904.

Q-104. Was that before you made the cash payment and executed the notes?

A-104.

~~No sir.~~ *Yes Sir.*

Q-105. Who is Mr. Christan,

A-105. He is a man that works for the Keystone People.

Q-106. Did he survey this tract of land?

A-106. I do not know.

Q-107. How much did he tell you was the acreage?

A-107.

or 168
167-~~8~~ acres.

Q-108. When did you first tell Mr. Young of this actual acreage.

A-108.

I do not know whether I told him or not.

Q-109. You do not know whether you told Mr. Young after Mr. Christan told you about it?

A-109.

No sir.

Q-110. So you do not remember of making any complaint of the actual acreage of the tract?

A-110.

I dont know whether I did are not.

Q-111. When was the deed executed and delivered to you?

A-111.

I forget what time, some time in March or April I think.

Q-112.

see
Did you ~~sign~~ it before it was delivered to you?

A-112.

No sir.

Q-113.

As a matter of fact, didn't you employ Mr. Irvine to draw the deed from Mr. William Young to you.

A-113.

No sir. I told him something. Mr. Young was in there, and Mr. Young told me he would get up the deed.

Q-114.

Did you tell Mr. Young that you would have the deed prepared and pay for it yourself?

A-114.

No sir, I dont think I did.

Q-115.

Was it not your desire, and did you not so express it that you wanted to be there and get in the rights, and that you

employed
had ~~appointed~~ Irvine to prepare the deed ?

A-115. I told him that I wanted to get the rights and we disputed in the rights about the right-away through the property, and Mr. Irvine agreed to get them and get all the right-aways, but he never got it the way it ought to of been.

You knew of course that the mineral rights was reserved?

A-

~~No sir.~~ *Yes Sir*

Q-116. Well you and Mr. Irvine did then discuss what rights you were to have in the timber on the 30 acre tract?

Ed.
We was talking about it and I told him I was to have the timber for farming purposes, and that they had notified my man to quit cutting, and Mr. Young agreed that was the way it ought to be, that I was to have the green timber from 12 inches down.

Q-117. When was this conversation and agreement between you and Mr. Irvine made?

A-117. It was some time in 1904, and we was talking about getting up the deed and title, and MR. Young said the Keystone people had no right over the land only on the lower end of the farm .

Q-118. Was it not after that you took part in the final settlement between the Keystone Coal and Iron Company and William Young, and agreed on the conditions that were to go in the deed from the Keystone Co. to Young?

A-118. We just talked about the way it was to be, and he told me of trying to get it in shape, he said one way and they said another way.

Q-119. Did you Mr. Irvine and Mr. Young and Mr. Bullitt finely have a meeting and come to agreement about this matter?

A-119. Well I was down there talking to Mr. Bulitt about it.

Q-120. Well didn't you all finely get together and agree.

A-120. We agreed upon it that way, but it was Mr. Young's business to get it up that way.

I am not asking you ^{about} ~~what~~ Mr. Young's business, but after you all had a conference and agreed ^{upon} ~~what~~ way to get the deed, ^{up} and didn't you agree that such ^{way} would be satisfactory to you?

A-120 Yes sir, I agreed to a certain way but it wasn't ~~the~~ put in the deed that way.

Q121. Didn't you go into Mr. Irvine's office and go over the deed from the Keystone Company to Mr. Young with him and finally agree thereon, and as matter of fact wasn't the Keystone ~~deed~~ executed and delivered just before the execution, and the delivery of the deed from Young to you.

A-121. No sir I never signed the deed, I think it was signed up by Young.

Q-122. As matter of fact, the deed was not signed by Mr. Young till April 1905, was it, and delivered to you?

A-122. I never seen the deed, I was in the room, they hadn't the deed made yet, he had made the Keystone people no deed.

Q-123. Well did you see the ~~deed~~ ^{deed} prepared for Mr. Young and delivered to them?

A-123. No sir, I never saw it.

Q-124. Did Mr. Irvine explain to you what was to go in that deed?

A-124. We agreed on certain points.

Q-125. Why did you think the purchase-money notes should bear interest from February the 15th. 1905, the date of the deed from young to you, when Mr. Young didn't execute and deliver the deed until April the first 1905?

A-125. Well, I didn't want to pay on it till after the deed was made, that was the contract.

Q-126. You say the thirty acres of timber was worth \$100.00?

A-126. Yes sir.

Q-127. What timber did you expect to get?

A-127. I expected to get the timber from 12 inches down.

Q-128. Have you ever examined the timber on this tract?

A-128. Yes sir.

Q-129. For what purpose you could have used the timber from 12 inches down?

A-129. For farming purposes, and posts.

Q-130. Did you make an accurate estimate of the number of posts and thing of that kind you could of made out of all the timber from 12 inches down.

A-130. I looked over the timber.

Q-131. How many of posts could you of made out of such timber

A-131. From 12 inches down some trees you could make several posts out of them.

Q-132. How many such trees were on this boundary?

A-132. They were several I dont know how many.

Q-133. How much was said posts worth?

A-133. They were worth from 5 to 10 cts.

Q-134. A matter of fact that you have made no estimate of them posts upon and over the boundary?

A-134. Yes sir, a ruff estimation of what it is.

Q-135. Dose'nt your deed give you the right to cut such timber on this boundary?

A-135. They claim not.

Q-136. Dose'nt this deed show it?

A-136. No sir.

Q-137. Did'nt you pay Mr. Irvine or agree to pay him for drawing the deed from Young to you?

A-137. I dont think I did. I agreed to do something. He were not to draw the deed until I was to be present.

And do you know whether or not Mr. Young was present?

No sir, I do not.

Q-128. Then you do mean that you did agree with Mr. Irvine to draw the deed from Mr. Young.

A-128. I mean I would pay the amount of cost if any of mine, but Mr. Young was to get up the deed.

Q-129. To refresh your recollection, didn't Mr. Young say that he would get Mr. Bulitt to draw the deed, and you said that you had got Mr. Irvine to draw it as he understood the condition

A-129. I do not recollect anything about them.

Q-130. In your answer and cross-bill, you say that you have obtained judgment against complaintant before a Justice of the Peace to the sum of \$110.00 .

A-130.. Well all I know I understood that Mr. Reasor had the claim, and ^{through Mr. Young} the judgment against him.

Q-131. You understood that Mr. Reasor did get judgment against him?

A-131. Yes sir.

Q-132. Did you attend any trial before the Justice?

A-132. No sir.

Q-133. Then you do not know whether this is correct?

A-133. No.

Q-134. You have indorsed and filed with your deposition, an account of W.M.Young Debtor to account of W.B.Nickles and CO.

\$115.35. Is this account intended to cover the judgment taken ^{off} off in your answer and cross-bill?

A-134. No sir, part was Mr. H.K.Palmer. He had interest in the store the last account Mr. Young traded.

Q-135. The account you have filed is a part of the name of W.B.Nickles, and a part of the name of W.B.Nickles & Co.

A-135. Yes sir.

Q-136. What personal knowledge have you of the sale of those goods to Mr. Young?

A-136. All I know is what Mr. Palmer told me about it.

Q-137. You cannot ^{of} ~~with~~ your own knowledge say whether or not Mr. Young got any or all of the articles in said account, or not?

A-137. No sir, I cannot say positively.

Q-138. Did you make this transcript from your daybook?

A-138. Yes sir.

Q-139. Is it written in your hand writing?

A-139. Part of it.

Q-140. How did you make it?

A-140. My son copied it.

Q-141. Then you didn't make it?

A-141. No.

Q-142. Was it made from your books of original entry, or was it made from your ledger.

A-142. Some of it was made from the daybook. We kept some things on the daybook.

Q-143. Has not Mr. Young after that paid you for a part of this account?

A-143. No sir.

Q-144. You swear that he has never paid you for any of the items in the account filed by you.

A-144. ~~Yes~~ ^{Yes} sir.

Q-145. Have you not since the said notes become due agreed with Mr. Young, at various times, to pay the sum with interest in full, subject to a credit for the payment to Judge W.S. Mathew Special Commissioner of \$468.41?

Question objected to because this proposition, if such proposition was made ^{was} for the purpose of compromising this matter.

A-145. No, I don't know whether I did or not. I will believe I will have you sworn as to what I said to you.

Q-146. I will ask you if you didn't without ^{refuse to compromise} ~~refuse of promise~~ attempt to borrow the money to pay off these notes with interest

A-146. Mr. Young was talking about borrowing some money and said maybe I could borrow some

Q-147. Did you not absolutely agree with Mr. Young and his Attorney, Mr. John W. Chalkley that you ^{would} attempted to borrow the money to pay off these notes with interest in full, regardless of any question of compromise, and that if you could borrow such money you would do so.

A-147. I told him I would pay him off if he would do me right and give me a chance.

Q-148. I will ask you again if at another time if I didn't write to you, and requested you to pay these notes with interest and you agreed that you would do so as soon as you could?

A-148. You might of wrote me that. The only talk I had with you about that was one time at the stairs one day. I never answered it.

Q-149. What was that talk at the foot of the stairs you refer

A-149. I told you that he had the notes and ^{he} had claimed to be so many acres and he sold the spring.

Q-150. Did you not say at that time, notwithstanding, these things, that if you could get the money you would pay the notes off with interest.

A-150. I do not know whether I did ^{or} not.

Q-151. Mr. Nickles did Mr. Young let you have 124 or 125 shocks of fodder, and was it to go as a credit on the store account.

A-151. Yes sir, I bought some fodder up ther and I was to give him 10 cts. a shock for it, and he said as I understood ther was about 60 shocks of it, which was \$6.00 and I paid him 10 cts. a shock for it.

Q-152. Was there any top fodder, in addition to this 124 or 125 shocks of cut up fodder.

A-152. Well he told me that there was 60 shocks of it, and then Mr. Collier went to haul it and he wouldn't let us haul it and when we did haul it it was damaged.

Q-153. Were the 60 you were talking about all the fodder you

got from Mr. Young?

A-153. That is all I got.

Q-154. Never got any fodder but 60 shocks?

A-154. No sir. I understood him to say they was 60 shocks
I never counted them.

Q-155. You are positive that is all you got?

A-155. Yes sir.

Q-156. Did you haul that fodder or have it hauled?

A-156. I had Charlie Collier to haul it.

RE-DIRECT EXAMINATION.

Mr. Nickles do I understand you to say that you got about 60
shocks of cut up corn and fodder from Mr. Young which you were
to pay 10 cts. a shock, and that you have paid him for the amount
in cash, which amount was deducted out of your payments?

A Yes sir.

Q-2. You state that there was a conference with you and

Mr. Young and Mr. Bulitt and Mr. Irvine about settling the
question of a right-away and other matters, ^{relating to} ~~railroading~~, ~~and to~~
the deed that you got from Mr. Young ^{and} was the deed in accordance ^{and}
ce with said conference?

A-2. Was not.

Q-3. Did Mr. Young represent to you that you were to have
all the timber under 12 inches on the 30 acres?

A-3. Yes sir.

Q-4. Did you ever employ Mr. R.T. Irvine to write this deed
for you from Mr. Young?

A-3. I told him something, I forgot just what I did tell
him.

Q-4. Have you looked over this account of \$115.00 that you
filed against Mr. Young and compared it with your books.

A-4. yes, I looked over it.

Q-5. Did you compare with the books?

A-6- Yes.

Q-7? Do I understand correctly from you that the two notes of \$500.00 each were not given to Mr. Young until after the deed was made in about February 1905?

A-7. No, I think it was in March.

Q-8. Mr. Nickles you say that Mr. Young represented you to have all the timber from 12 inches down in diameter and under on the thirty acres. What is your general meaning of merchantable timber in this Country.

A-8. My intention is something straight and clear of nots and defects.

Q-9. What sizes does it take?

A-9. Companies wont take it under 20 inches, ~~and up~~.

Q-10. I will ask you further if you know whether or not Mr. Irvine, Attorney for the Keystone Coal & Iron Company, didn't understand that you were to get all of the timber from 12 inches down on this tract, that you might want for farming purposes and domestic.

A-10. I do not. My understanding was I was to get it from 12 inches down.

Q-11. Have you been prevented by the Keystone Company or any of their Agents from cutting this timber on the 30 acre tract?

A-11. Yes sir.

Q-12. How were you prevented?

A-12. Wy, ^{no commit} Mr. Young told my man to quit cutting.

Q-13. Do you believe that you are legal bound by that notice not to cut any on that tract than the timber mentioned by the deed?

A-13. I do not know what about it, ^{Want to} and keep out of trouble ^{and then}.

Q-14. Have you ever heard of that Company being beaten in a Law Suit?

A-14. Yes sir, I have beat them myself.

*and further deposed with not -
W B Nickles*

Mr. A.C. Collier, another witness of lawful age, being first duly sworn deposes as follows:

Please state your name, occupation and residence?

Name, C.C. Collier, occupation farming, age 44, and live in the Wildcat Valley.

Q-1. Did you ever hear a conversation between Mr. Young to any one about the spring, on or near the lands that Mr. Young sold to Mr. Nickles?

Question objected to because of its ^{lack} ~~like~~ of definiteness, and because it is improper, unless for the impeachment of the witness, and if so, it does not state the time and place and who was present, and does not state that Mr. Nickles was present or knew of this conversation.

A- No.

Q-2. Did you ever hear Mr. William Young tell Mr. Nickles anything about that spring?

Question objected because leading.
and if so what was it?

A-2. Mr. Young told Mr. Nickles that spring was on his land by 50 yds.

Q-3. When was this conversation?

A-3. Was about when we was building the barn.

Q-4. When, what time?

A-4. I could'nt tell the time.

Q5. Was it while Mr. Young was living in Mr. Nickles house that he purchased from Mr. Young?

A-5. yes sir.

Q-6. Did you at the time or shortly before, or afterwards, hear Mr. Young tell Mr. Nickles anything about the timber on the adjoining 30 acre tract?

Question objected to because leading the witness.

A-6. Yes sir.

Q-7. What was said about this timber?

A-7. Well when we was building the barn, Mr. Nickles asked Mr. Young in regard to cutting some timber for boards to over the building, and Mr. Young him to go up there and get some timber it would be all right, that 30 acres of the timber was excepted for the benefit of the farm.

Q-8. Who else was present except you Mr. Nickles and Mr. Young when this conversation was? ^{had}

A-8. If there was any one I dont remember it.

Q-9. When was this barn built as well as you can recollect?

A-9. I can tell you when it was, but I think it was in the fall but I can't say it has been so long back, but it was nearly completed.

Q-10. This was the first fall after Mr. Nickles come in to control of the place was it?

A-10. Well I think it was.

Q-11. Did you have charge of the building the fence that Mr. Nickles had built on the place?

A-11. yes sir.

Q-12. Did or not Mr. Young show you the line near the spring?

A-12. Well, when I got ready to build the fence I asked Mr. Young to sight me on the wirm, and Mr. Young sighted me while I built, and afterwards I found I was down too far.

Q-13. What do you mean by being too far?

A-13. Too far towards the barn.

Q-14. About how many feet were you from the line?

A-14. From the corner to where the fence stands now, I was 15 or 20 feet.

Q-15. Did the line that Mr. Young showed you, take in or leave out the spring?

A-15. Where Mr. Young showed me to put the fence it leaves the spring out. I never measured the distance, but about 60 yds.

Q-16. About what time of the year was it that Mr. Young showed you this line?

A-16. Well late in the fall, as well as I remember.

Q-17. Did Mr. Nickles see this fence and see where you had it?

A-18. He saw it after I had it built.

Q-18. About this time, the time you were building the fence did you not show Mr. Nickles the dogwood corner, and showed him where the line would run, and showed him that the line would be on the out side of the spring?

A-18. I showed him what I thought was the corner.

Q-19. Did you show him where the line would go with reference to the spring?

A-19/ I showed him the corner as I was going by, but I do not know where ^{there} that was the right corner or not nor where it went, for I was not acquainted with the lines.

Q-20. Did you not know that Mr. Nickles in the fall and early winter the first year that he was there, knew where the lines ran and knew that the spring was on the out side of the line?

A-20. I cannot answer that way.

That is ^{as} ~~were~~ Mr. Nickles there at any time while you were there, and didn't he see where you were laying this fence?

A-20. He saw where I was putting that fence, I cannot tell where that line went, but I told him that I thought that was bound to be the corner.

Q-21. Mr. Young told you that ~~it~~ was the corner?

A-21. No sir, no never.

Q-22. Mr. Young did tell you where the line ran ^{near} ~~on~~ the spring?

A-22. He showed me where to lay the ^{worm} ~~worm~~.

Q-23/ They ran the fence below the spring?

A-23 Yes sir.

Q-24. Did you understand Mr. Young to say that you could get any sort of timber on the 30 acres?

A-24. Well I understood Mr. Young to say about the timber, that it would be all right to cut anything up there and there would be no trouble.

Making boards it takes good timber. Or did you mean to get anything for farming purposes?

A-24. Yes sir, for farming purposes to make posts.

Q-25. Mr. Collier did you ever haul any fodder raised by Mr. William Young for Mr. Nickles?

A-25. Yes sir.

Q-26. I will ask you how much you hauled for him.

A-26. Well sir, I couldn't tell you the exact amount for there were some doubled up, and I went in there to haul some fodder and Mr. Young told me objected to me getting it until him and Mr. Nickles agreed on it, and I told Mr. Nickles about it, and so the fodder layed over there till it was damaged before it was hauled, and so I wanted to haul the fodder and saw he was going to lose it, and went to work and tried to get it in the barn to try to save it but this fodder was damaged then a great deal.

Q-27. Did you remember how much top fodder they was?

A-27. No, I don't remember.

Q-28. Something like 60 shocks?

A-28. I cannot say.

Q-29. In addition to the top fodder, wasn't there some whole shocks?

A-29. The first load I hauled was cut up fodder was the first I handled as well as I remember, and then there was some tops, what I mean is where ~~it~~ ^{has been} the fodder pulled.

Q-30. Give your best recollection of how many tops they were and how many shocks they were?

A-30. I can't do that for it was in bad shape, for the snow

had damaged it and I could'nt tell anything about it.

A Q31. What is your idea of the value of the fodder before it was damaged?

A-31. Well, if I knew how much they were I could answer.

Q-32. Mr. Collier when was that you hear Mr. Young say that the spring was on the land by 50 Yds.

A-32. About the time we went to work on the barn that this talk was had.

Q33. That was of course before Mr. young made the deed to Mr. Nickles?

A33. I suppose it was.

RE-DIRECT EXAMINATION.

Q34. Did I understand you to say that you did not know which a way that line ran from the corner that you found?

A-34. Well, I did'nt know at that time.

Q35. Now Mr. Collier, about this fodder, how many lots of fodder were there that Mr. Nickles got from Mr. Young?

A35/ Well he got some cut up fodder, and then they was some top fodder.

Q36. Aboutt how much of the cut up fodder did he get?

A36? I do not know positively how many shocks they were. They were so he said about 60 shocks.

Q37. About how many of th other fodder?

A37. As well as I remember about the top fodder they wer about 25 shocks.

Q38. Did Mr. young get any of these tops for his own use, afetrwards, and if so, about how many?

A-38. As well as I remember he got some but I dont know how many.

Q39. Doe you know whether or not they were settled for by Mr. Nickles bbefore you haulexd it or not?

A-39. I do not.

Q-30. You said something about the dispute of the hsuling of the lasst fodder.

A-40. Well about the fodder, I went in there to haul some and Mr. Young said Mr. Nickles, as well as I remember had better settle with him for the fodder and agree on the price.

Q41. Did Mr. Young ever tell you afterwards a greement or settlement had been made?

A41. I dont remember that he did.

Q42. Did he tell you to haul the fodder?

A-42. Mr. Nickles told me to haul the fodder and fix it up and try to save itfor it was a pitty to lose it.

Q43. Was this fodder damaged?

A43. Yes sir, it was.

Q44. What was the last fodder you hauled reasonable worth, the condition it was in when you hauled it?

A-44. It would'nt ~~worth~~ much.

Q-45. Well was it worth \$2.00?

A-45. Well, of course, to the best of my knowledge, so far as I am concerned about the fodder, and the fodder hasd laid and in the condition it was, I would'nt of handled it for it.

Q-46. As I understand you to say that Mr. Young prevented you from hauling it when it was really worth something?

A-46. Mr. Young said it was best for him and Mr. Nickles to have a settlement about the fodder.

Recross Q47. Why could'nt you Mr. Collier give me the estimate of the number of shocks and the value as well as Mr. Horsley?

A47. It has been so long back that I have been studying, of course I wanted to tell this thing right to the best of my judgment, that is the reason why I could'nt do it I had to study You take thi gs back like that two or three years and little things like that it puts a man to studying.

Q48. Did'nt I give you time to thing about it?

A48. Of course, I had to study, and it just come to me after I cmmence studying.

Q49. Did Mr. Young leave that fodder in good condition or

did he ^{throw} ~~through~~ it in a pile?

A49. Some of it was standing and some of it was down.

And isn't it a fact that you took the fodder out of the shock and put in a pile to haul it and afterwards you put it in the pile it damaged?

A49. Yes, it damaged after I put it in the pile and it damaged before I put it in.

RE-DIRECT EXAMINATION.

Q-50. Mr. Collier isn't it a fact that a part of that fodder was damaged before you ever piled it in a pile to haul?

A-50. Yes the fodder was down and was damaged.

Q51. What was the damage to the fodder that you piled out in a pile if it had of been left like it had of been piled?

A-51. I could'nt say how much, of course, to leave it out and is not kept in shape it is not good.

Witness

William Nichols,

Further Defendant says not
C. C. ^{his} Collier
mark

Mr. H.K.Palmer, another witness of lawful age, being first duly sworn deposes as follows.

State your name, age, occupation and place of residence?

Name H.K.Palmer, age 34 residence Big Stone Gap, Va.
occupation ~~Merchant~~

I show you an account filed by Mr. Nickles against Mr. Young, please examine it and state whether or not it is correct if you know?

A- It is correct so far as I know.

Q-2. What connection were you with Mr. Nickles at the time the goods were sold?

A-2. I was working for him at that time.

Q3. Did you sell these goods to Mr. Young for Mr. Nickles?

A93. I sold most of them. ~~might~~ of been some that I didn't

Q 4. Have you compared that account with the book you all kept?

A4. Yes sir.

Q-5. Is that a true copy of the books?

A-5. We looked over it and found about 3 errors, I found in one place where he had failed to charge 25 cts. another 90 and one cts. he had 5 cts. too much.

Q6. Do you know whether or not any part of that account has ever been paid or not?

A6. Not that I know of. *X answer*

Q7. Henry you say this account is correct so far as you know, how far do you know?

A-7. I know I kept the books at that time and if I have made any mistake I know nothing of it. It has been over a year since this transaction.

This account seems to run from March the 27th 1905 to January the 5, 1906. Were you at Mr. Nickles all during that time?

A-&. As I remember I was there from the time I started out until MR.

Young moved.

Ex 7
Q-8. What books did you keep?

A8. Well I handled the ledger.

Q-9. Did you keep the books or did he keep the books?

A-9. Well so far as keeping all of the books, Mr. Nickles had out some of the books, and would come and possible he would have sme transaction and put it down.

Q10. What books did you compare this account with?

A-10. With the ledger.

Q11. Were there any other clerks in the store at that time

A-11. Well I made a trip or two to Bristol and some stayed in there when I was gone.

Q-12. Did you not have an assistant?

A-12. I was in charge of all the store.

Q13. Do you recollect who was in charge of the store before

A13. No sir, I do not, I heard it said, it was some young fellow but I cant think of his name.

RE-DIRECT EXAMINATION.

Q- Did you ever show this account to Mr. Young or any p part of it?

A-14. Well we looked at the account.

Q-15 Did he acknowledge his indebtiness?

The last two objected to because of the subject in the direct examination.

He said that he would call around and see Mr. Nickles and he would settle it with him, but he moved away and never did, and he got an itemized statement of the account and said him and Mr. Nickles would settle, but he never called for it.

A. H. Palmer

Virginia, County of Wise

I, Wm B. Carnes a Notary Public, in and for
for the County of Wise state aforesaid do certify that
the aforesaid depositions of W B Nickels C C Collier and
H K Palmer were duly ~~made~~ sworn to and subscribed before me at
the time and place for the purposes in the caption
hereto mentioned.

Given under my hand this 20th day of March 1907

W B Carnes
Notary Public.

Notary's Charges
\$17.50

Stamps .16
total \$17.66

WM Jann
vs Depositions

W B Nichols

Filed April 11 1907
S. C. J. Ewing,
Clk.

The deposition of William M. Young taken before me, G. L. Taylor, a Notary Public in and for the County of Wise and State of Virginia, on this the 16th day of February, 1907, at the Office of Bullitt & Kelly in the Town of Big Stone Gap, between the hours of nine o'clock A. M. and six o'clock P. M., pursuant to the notice hereto attached, to be read as evidence on behalf of the complainant in a certain suit pending in the Circuit Court of Lee County, Virginia, wherein Wm. M. Young is complainant, and W. B. Nickels is defendant; present J. F. Bullitt attorney for Complainant and W. J. Horsely, attorney for defendant, and present, also, W. B. Nickels and William M. Young in person.

William M. Young, a witness of lawful age being first duly sworn, deposes as follows:

DIRECT EXAMINATION BY MR. BULLITT:

Q. What is your name, age, residence and occupation?

A. Wm. M. Young, age fifty one years, occupation farmer, residence, Lee County, Virginia.

Q. Are you the plaintiff in this suit?

A. Yes, sir.

Q. Mr. Young, the ~~notes~~^{are} sued on in this case ~~is~~ dated August 1st, 1904--the deed filed as an exhibit with the bill is dated on the 15th day of February, 1905, and refers to the notes sued on as follows, viz: "and the balance to be paid in two installments of five hundred dollars each in six and twelve months from this date, respectively, evidenced by the notes of the said party of the second part bearing the date hereof and payable as aforesaid and bearing six per cent interest from date". State whether or not the deed is a mistake in referring to the notes as being dated as of the date of the deed, and if so, how this mistake arose?

Question objected to by Mr. Horseley's counsel for the defendant, on the ground that the deed is the best evidence.

A. The deed Mr. Nickels had prepared,--I believe Mr. Irvine told me he prepared it,--we had to wait on that until the deed got back from Philadelphia, and it was written as stated there, in February and acknowledged on the first day of April, and the notes were dated back to the time I turned over to Mr. Nickels possession of the land, and it was a mistake in the deed in referring to the notes as of even date.

Q. The notes were properly dated on the 1st day of August, 1904, were they?

A. Yes, sir.

Q. You say that Mr. Nickels had that deed prepared?

A. Mr. Nickels told me he would do it, and Mr. Irvine told me he did do it.

Q. Did you have anything to do with the preparation of the deed?

A. Know, I only got the deed after it was prepared and handed it to you to examine it.

~~Now~~ Q. When the deed was handed to you, did you notice the mistake referred to in the deed?

A. I don't think I did.

Q. Well does the deed or not, really and in truth refer to the notes which you have sued on in this case?

A. They refer to them.

Q. I say, the two notes which you have sued on in this case are the notes referred to in the deed.

A. Yes, sir, they are the notes.

Q. One of the notes there appears this ~~endorsement~~ endorsement, viz: "This note is not to be collected until the deed of trust against the land is satisfied." signed "Wm. M. Young?"

State whether or not that deed of trust has been satisfied?

A. It has.

Q. Was it, or not, satisfied before this suit was brought?

A. Yes, sir.

Q. In the answer of Mr. Nickels he says: "On the 20th day of December, 1904, respondent paid to W. S. Mathews, Special Commissioner, the first note of \$208.28, and the note of \$68.28, which, with interest to December 20th, 1904, amounted to something over \$290.38. Were these two notes, notes for which the deed of trust referred to above was executed in part to secure?

A. Yes, sir.

Q. Mr. Nickels says that he paid the said two notes?

A. He did.

Q. Was he, or not, ever given any credit by you^r for ~~this~~ this payment, and if so, how?

A. The debt and interest amounted to Two Hundred and ninety dollars and some cents, and it was taken out of the Three thousand Dollar cash payment.

Q. He did not pay you then, at the time the deed was executed, the whole of the Three Thousand Dollars in cash, but this \$290.38 was deducted and he was given credit for it?

A. Yes, sir; and some other small checks.

CROSS EXAMINATION BY W. J. HORSELEY, ATTORNEY
FOR DEFENDANT.

Q. Are you the same Mr. William Young who formerly lived in Big Stone Gap?

A. I am.

Q. When did you first sell and give possession of this tract of land to Mr. W. B. Nickels?

A. I don't remember the date of the sale; but I delivered possession to him and his men went to work on it on the first day

of August, 1904.

Q. You say that the \$290.38 paid to Mr. Mathews, Special Commissioner, was deducted out of the \$3,000.00 first payment? Were there any other payments ^{due} ~~to~~ Mr. Mathews at that time?

A. Yes, sir.

Q. Do you remember the amounts of them?

A. I heard it read in Mr. Nickels' answer that there were two notes of \$208.00 each--I think that was correct.

Q. Mr. Nickels states that on the 17th day of March, 1906, he paid to the said W. S. Mathews, Special Commissioner the two remaining notes of \$208.28, which with interest to date of payment amounted to \$468.41. Was this amount paid by Mr. Nickels for you?

A. Yes, sir.

Q. Should it be credited on the notes which you have sued upon?

A. Yes, sir.

Q. Mr. Nickels also states in his answer that he obtained judgment against you before a Justice of the Peace of Lee County for the sum of One Hundred and Ten Dollars. Did you owe Mr. Nickels this ~~amount~~ amount?

Question objected to because not cross-examination and because irrelevant.

A. I owed Mr. Nickels a store account, and Mr. Nickels I think knows very well, and his counsel, also, that you can't take judgment before a Magistrate in the State of Virginia, for anything over \$100.00. He brought an action against me before the Magistrate and I had it removed to Court.

Q. Then, what is the proper amount yet due you from Mr. Nickels according to your calculation?

Question objected to, if it is intended that the witness

shall, in arriving at the proper amount, deduct any part of the alleged judgment referred to, because, according to the witnesses answer no judgement had been given for the account whatever, and because it is an open account and cannot be offset in this proceeding, and is not, in deed, pleaded as an offset, nothing being pleaded except an alleged judgment which has been obtained.

A. I have not calculated it. Along in May, 1906, I think Mr. Nickels and his daughter came down to my house, and I had been trying to get some money from Mr. Nickels, and we agreed as we would now, or at any other time, that when he settled it, if he came up and paid, he was to have the true amount of the store account deducted.

RE-DIRECT EXAMINATION.

Q. As I understand you, you admit owing Mr. Nickels something on a store account?

A. Yes, sir.

Q. Do you know how much that is?

A. I do not.

Q. As I further understood your answer above no trial has ever been had on this suit in the Magistrate's Court?

A. No, sir.

Q. Removed to the Circuit Court before any trial?

A. Yes, sir.

Q. And is still pending in the Circuit Court?

A. Yes, sir.

Q. Do you admit owing him on the store account the \$110.00 which he sues for?

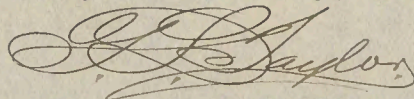
A. I certainly do not.

Further this deponent sayeth not.

STATE OF VIRGINIA :
 : To-wit:
COUNTY OF WISE :

I, G. L. Taylor, a Notary Public in and for the County and State aforesaid do hereby certify that the foregoing deposition of William M. Young ^{was} ~~was~~ taken, sworn to and signature waived by agreement of counsel, on the day and time and for the purpose mentioned in the caption hereto.

My commission expires on the 4th day of January , 1911.
Given under my hand this 16th day of February, 1907.



Notary Public.

Notary Fees 2 hrs. @ \$.75 \$1.50

Notice to take Depositions.

[Code §§3359-68; 4 Min Inst. (2ed.), 745 & seq.; 2 Dart Chy. Prac. (2ed.), p 783 & seq.; Hurst's Guide & Manual, p. 16 & seq.]

To

W.B. Micals

Take notice, that I shall, on the 16th day of February, 1907, at
the office of Squire Wiley
in Big Stone Gap, between the hours of 9, A. M., and
6, P. M., on that day, proceed to take the depositions of myself, R. H. Haine
and others, to be read in the evidence in my behalf, in a certain suit in equity depending in
the Circuit court for the county of Lee wherein you are
Defendant and I am complainant.

and, if, from any cause, the taking of the said depositions be not commenced on that day, or, if
commenced, be not concluded on that day, the taking of the same will be adjourned and continued
from day to day, or from time to time, at the same place and between the same hours, until the
same shall be completed.

Respectfully yours,

Wm. M. Young
by Squire Wiley &
J. W. Chacey, Jr.

Executed by delivering a true copy of
within notice to W.B. Nicols and a true copy
to W. Horsley, his attorney each in person in Big Stone
Gap, Wise County, Va. This Feby 9th, 1907

D.N. Bostie

Assistant Sergeant Town
of Big Stone Gap, Va.

State of Virginia,
County of Wise }

I, J. W. Gaudy, a notary public in and for
the State and County aforesaid, do hereby certify
that D. N. Bostie this day personally appeared before
me in my county aforesaid, and made oath that he
executed within last time as above set forth.

Given under my hand this Feby 11th, 1907.
J. W. Gaudy
Notary Public

N. M. Young v.

vs.

{ Deposition of
N. M. Young.

N. B. Nichols

Filed Feb. 18, 1907.

A. C. Ewing,
Clerk—

W. M. YOUNG - - - - - Plaintiff.

Vs. In Chancery.

W. B. NICKELS, - - - - - Defendant.

To the Honorable H.A.W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

Your undersigned, who was by a decree entered in the above styled cause on the 21st day of May, 1907, appointed a Special Commissioner for the purpose, and directed (in case the defendant should fail to pay the judgment therein adjudged against him within thirty days from that date) to proceed to sell at the front door of the Courthouse of Lee County, at public auction, to the highest bidder, the real estate in the bill and proceedings mentioned, belonging to the said defendant, begs leave to report as follows, Viz:

After the expiration of thirty days from the date of said decree, and said defendant failing to pay off said judgment, your Commissioner proceeded to advertise said real estate for sale by posting a notice thereof at the front door of the Courthouse of Lee County more than ten days before the day of sale, and by publishing a notice of said sale in the Jonesville Star, a weekly newspaper published at Jonesville Va. for two weeks, as provided in said decree. A copy of said notice together with the Printer's certificate of publication is herewith filed as part hereof marked "Notice".

After having duly advertised said sale, but before ^{the date} ~~before~~ for the said sale of said real estate, your Commissioner was notified by the parties, through the counsel for the plaintiff, that all matters and things in said cause had been fully settled between them, and it agreed that no sale should be made. The plaintiff, by his counsel paid over to your Commissioner the costs of the said suit as taxed by the Clerk of this Court, together with one-half commissions to your Commissioner for his services, and at his request your Commissioner has disbursed said costs to those entitled thereto, retaining his own commissions. This being a full and complete settlement of the cause, and there remaining nothing further to be done therein, the same should be stricken from the docket.

Respectfully Submitted. *Geo. P. Cridlin, Spec. Comm.*

W. M. Young
vs. { In Chy.

W. B. Nichols

Report of Settlement

Filed Aug. 5th 1907

H. C. T. Ewing, Clerk

THIS DEED, made and entered into this, the Fifteenth day of April A. D. 1904, by and between the Keystone Coal and Iron Company, a corporation organized and existing under the laws of the State of Virginia, having its principal office at Big Stone Gap,, Virginia; George Burnham, Junior and Anna L., his wife, of Philadelphia, Pennsylvania, and Sarah B. French, of Boston, Massachusetts, parties of the first part, and William M. Young, of Lee County, Virginia, party of the second part; WITNESSETH: THAT, for and in consideration of a certain deed this day executed by the said party of the second part, and his wife, to the said parties of the first part, to be delivered simultaneously with the delivery hereof, the said parties of the first part do hereby grant, bargain, sell and convey unto the said party of the second part, with covenants of Special Warranty, all that certain tract, piece or parcel of land, situate and being in Lee County, Virginia, in the Wild Cat Valley, more particularly bounded and described as follows, to-wit: BEGINNING at a stake 2 feet from Walnut pointer on the west line of the Preston survey and corner of land conveyed to the Keystone Coal and Iron Company et al, by Wm. M. Young by deed of even date herewith and with a line of same S 28 1/2 E. 291 feet to a stake, being N. 53° 45' W 47 feet from A beech pointer; N. 58 E. 2533 feet to a stake in a flat 4 feet and 5 feet from dogwood pointers N. 43 E. 710 feet to a stake 7 feet from White-oak pointer and 7 feet from dogwood pointer; N. 48° 50' W. 251 feet to a set stone on the right of way line of the Virginia and Southwestern Railroad being 25 feet from the centre line of said Railroad, and with the said right of way line N. 36 1/4 E 980 feet to a stake; thence curving to the right with a radius of 850 feet more or less, to a stake, the chord of the curve being N. 46 1/2 E. 358 feet; N. 58 1/2 E. 205 feet to a stake; thence curving to the left with a radius of 950 feet more or less to a stake, the chord of the curve being N. 45 1/4 E. 538 feet; thence N. 51 1/2 W 64 feet to a stake on a line of the Preston survey; being 7 feet from elm pointer, and, with said line of said survey N. 36° 11' E 1214 feet to a stake N. 81° 10' W. 133 feet to a Black oak; N. 72° 10' W. 128 feet to a Beech and dogwood;

N. 45° 40' W 439 feet to a stake in the public road and with the same S. 34° 50' W. 217 feet; S. 35° 40' W 364 feet; S. 20 W. 153 feet S. 45 1/2 W. 212 feet; thence leaving the road N. 36 W 117 feet to a stake; N. 73° 20' W. 325 feet to a small Black Oak; S. 56 1/2 W. 402 feet to a stake; S. 26 W. 377 feet to a stake; S. 43° 10' W. 156 feet to a stake S. 28 1/4 W. 444 feet to a beech and sassafras; S. 59 1/2 W. 180 feet to a stake, Black Oak and pine pointers; S. 81° 10' W. 96 feet to a stake; N. 39 W. 201 feet to a stake S. 44 W 417 feet to a stake; S. 50 W 187 feet to 2 small Black Oaks; S. 56 1/4 W. 334 feet to a stake S. 47 W. 358 feet to a Black Oak; S. 42 W. 220 feet to a stake 2 hickory pointers; S. 20 1/4 W. 305 feet to a small black oak; S. 35 1/2 W. 164 feet to a Sugar tree; S. 24° 50' W. 174 feet to a stake on the right of way line of the Virginia & Southwestern Railroad and 25 feet from the centre line of said railroad and with the said right of way curving to the left with a radius of 980 feet more or less, to a stake, the chord of the curve being S. 50° 50' W. 753 feet S. 29° 40' W. 83.5 feet to a stake on line of the Preston Survey; thence leaving the said right of way line and crossing the Virginia and Southwestern Railroad and with a line of the Pre ston Survey S. 28 1/2 E. 364 feet to a stake; N. 68 E. 36 feet to a stake, poplar sprouts, pointers; S. 35° 28' E. 472 feet to a stake, 2 poplar pointers; S. 53° 10' W. 95 feet to the Beginning, containing 175.03 acres, including in this boundary right of way of the Virginia and Southwestern Railroad which being deducted leaves 167.84 acres more or less.

But the said parties of the first part except and reserve out of this deed all the coal and coal products, oils and gas~~es~~, salt minerals and salt water iron and iron ore and other minerals and mineral products lying in, on or under the hereinbefore described land, together with rights of way over and across the surface of said land for any and all railroads, tramroads, haul-roads and other ways, with right to operate the same in using and transporting the said minerals and mineral products from the hereinbefore described land, or from any other part of the land this day released by deed from the said second party and wife to the said first

parties as aforesaid; with the right to erect upon the said land hereinbefore conveyed, to maintain operate and at pleasure remove therefrom, any buildings, tipples, bridges, furnaces, saw-mills or other structures and machinery and switches or spur tracks that may be deemed necessary or convenient for prospecting, operating

said minerals or mineral products on the land hereinbefore conveyed as well as the minerals,
manufacturing and removing the mineral products, timber and lum-

ber on the said other lands this day released by deed to the said first parties together with the right to make such use of the surface or any part thereof, and the water thereon as may be deemed necessary or convenient in mining, operating, manufacturing or transporting the said minerals and mineral products from the said lands hereinbefore conveyed as well as the said minerals and mineral products and timber and lumber from the other lands this day released by deed of the said parties as aforesaid; together with the right to enter upon the said land and remove therefrom all minerals and mineral products, including stone and water that may be useful or necessary in said operation. It is agreed, however, that said first parties shall not have the right to erect dwelling houses for miners or other laborers on said premises. But it is further agreed that said rights of way shall be located in such a way as will have due regard not only to securing as low grade as possible for same without unreasonable development of distance and undue cost of construction, but also to doing as little damage as practicable to the land of the said second party; and if the parties hereto or their successors in interest are unable to agree on such location, then the parties of the first part or their successors in interest shall select one competent disinterested person, and the party of the second part, or his successors in interest shall select another to whom said matter shall be submitted as arbitrators, and if the two thus selected cannot agree, then they shall select a third, and the decision of any two of the three thus constituted, shall be final and binding, and any right of way thus located shall be adhered to by said first parties and they and their agents, servants and employees shall not use any rights of way than those so located; The expense of

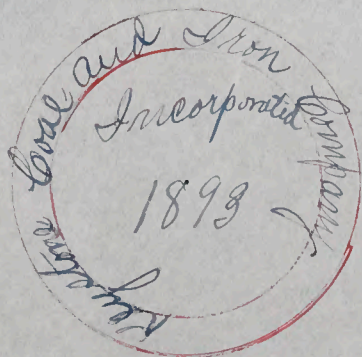
such arbitration shall be borne equally by the parties hereto. It is further agreed that said parties of the first or their successors in interest, when they desire to locate such rights of way, shall give a written notice to said party of the second part or his successors in interest and name therein the arbitrators to be selected by them and said second party or his said successors in interest shall, within then days from the receipt of such notice, name the arbitrators to be selected by him, and if he fails for ten days to do so, then the arbitrator named by the said first parties shall name the second arbitrator and the two thus constituted shall proceed as hereinbefore provided, as if said second arbitrator had been named by said second party or his successor in interest, and if the two thus chosen cannot agree, they shall select a third and the decision of two of the three thus chosen shall be final and binding on all the parties hereto. It is further agreed that said parties of the first part shall keep and maintain suitable gates or draw bars at all places where any roads or tramways on such rights of way cross any outside or partition fences, or if a railroad be so located, then sufficient cattle guards shall be maintained at said places- Said parties of the first part shall also make and maintain crossings for wagons over any such tram-roads or railroad such as may be reasonably necessary for the party of the second part and his successors in interest in passing to and from field to field on said premises, and the said parties of the first part further grant unto the said party of the second part the right to use water ~~for~~ domestic and farming purposes from the Spring on the south side of the Public road near the present dwelling house of the said party of the second part, and near the south line of the tract of land hereby conveyed but such right not to be exclusive and not to hamper unduly the use of said water by the said parties of the first part, their heirs, successors or assigns, if they should desire to use the same. And the said parties of the first part further grant to the said party of the second part the right to get fire-wood for domestic purposes only for himself and family from any down timber on the tract

of land released by said second party by deed of this date, which lies on the Powell's Mountain side, or South side of the tract hereby conveyed, but if at any time down timber sufficient for such purposes cannot be reasonably obtained, then said second party may cut unmerchantable timber for such purposes under twelve inches in diameter from the following tract of land located on said

Powell's Mountain, to-wit: BEGINNING at a stake four feet and five feet from dogwood pointers, corner to land conveyed to said Young by the Keystone Coal and Iron Company et al, thence with one line of same, N. 43 E. 710 feet to a stake seven feet from white oak pointer and seven feet from dogwood pointer; S. 47 E. 1840.6 feet to stake; S. 43 W. 710 feet to a stake; N. 47 W. 1840.6 feet to the Beginning, containing 30 acres. But this privilege is not to prevent said parties of the first part from clearing any or all of said land or from selling and removing any or all of said timber, but so long as any of said timber remains standing on said land, then this privilege shall remain to the said party of the second part and if said party of the second part sells said land, this privilege shall pass to his vendee, but not to more than one such vendee ~~of~~ all or any part of said land. TO HAVE AND TO HOLD unto the said party of the second part in fee simple, with the exceptions and reservations hereinbefore set forth. IN TESTIMONY WHEREOF the said Keystone Coal and Iron Company has caused these presents to be signed by George Burnham, Junior its President, and its corporate seal to be hereunto affixed, attested by J. H. Dingee, its Secretary, and witness the following signatures and seals of said Sarah B. French and George Burnham, Junior and Anna L. His wife, this the day and year first above written.

KEYSTONE COAL AND IRON COMPANY,

Geo. Burnham Jr. President.



Attest: J. H. Dingee, Secretary

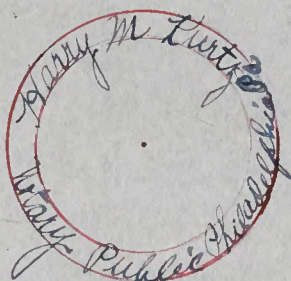
Geo. Burnham, Jr.

Anna L. Burnham

Sarah B. French

STATE OF PENNSYLVANIA, County of Philadelphia, to-wit:

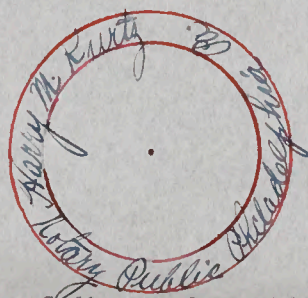
I, Harry M. Kurtz, a Notary Public in and for the County aforesaid in the state of Pennsylvania, DO CERTIFY that George Burnham, Junior, whose name is signed as **President** to the foregoing writing bearing date the Fifteenth day of April, 1904, has acknowledged the same before me in my County aforesaid. Given under my hand this 23rd day of February, 1905.



Harry M. Kurtz, Notary Public. Commission expires February 27th, 1905.

STATE OF PENNSYLVANIA COUNTY OF PHILADELPHIA, to-wit:

I, Harry M. Kurtz, a Notary Public in and for the County aforesaid, in the State of Pennsylvania, DO CERTIFY that George Burnham, Junior and Anna L. Burnham, his wife, whose names are signed to the foregoing writing bearing date the Fifteenth day of April, 1904, have each acknowledged the same before me in my County aforesaid. Given under my hand this 23rd day of February, 1905.



Harry M. Kurtz Notary Public

COMMISSION EXPIRES FEBRUARY 27th 1905.

State of Massachusetts, City of Boston, to-wit:

I, Chas. T. Gallagher, a Notary Public in and for the City aforesaid in the State of Massachusetts, do certify that Sarah B. French, whose name is signed to the foregoing writing bearing date the Fifteenth day of April, 1904, has acknowledged the same before me in my City aforesaid. Given under my hand and seal this the 28th day of March, 1905.

Chas. T. Gallagher, Notary Public.

My Commission expires November, 11, 1910



Virginia, Lee County, to-wit:

In the Clerk's Office of Lee County, on this the 6th day of April, 1905. This deed was presented, and together with the certificate annexed, admitted to record.

Teste: H. C. T. Ewing, Clerk.

Virginia, Lee County, to-wit:

I, M. E. Flanary, Deputy for H. C. T. Ewing, Clerk of the Circuit Court, for and in the County and State aforesaid, do certify that the foregoing is a true and perfect copy of a deed from the Keystone Coal and Iron Company, et al, to Wm. M. Young, as the same appears of record in my office, in Deed Book 42, page 472 etc.

Given under my hand this the 7th day of May, 1907.

M. E. Flanary, Deputy Clerk.

Wm M. Young
From Deed
Keystone Coal & Iron Co.,
et al
Filed May 9, 1907.
H. C. Ewing,
Clerk.

Copy

"Exhibit Keystone
Deed" filed with
deposition of W. M. Young
in case of Wm Young
vs. W B Nickels

H. C. Ewing,
n. p.

Clerk \$2.50

Virginia Lee county to Wilt to P M Rason constable
of said county I command you to summon Wm Young
if to be found in your district to appear at Olinger
on the 26 day of May 1906 or June to answer the claim
of W B Nicoles upon a claim for money not
exceeding \$100.00 exclusive of interest to Wilt
for the sum of \$46.78 et due by account
given under my hand this May the 15th 1906
J. L. Olinger J.P.

"Exhibit 27." filed
with Deposition of N. M.
Young in suit of

N. M. Young vs. N. B. Nichols

Filed May 9, 1907

J. C. G. Ewing,
clerk.

Virginia Bee county to Wm H. Ressor constable
I command you to summons Wm Young if to be
found in your district to appear at dinner on the
~~24~~ day of May to answer the claim of W. B.
Nicolas & S. S. Parmes upon a claim of money
not exceeding \$100.00 exclusive of interest to wit
for the sum of \$69.71, to due by account and
then and there make return of this warrant
given under my hand and seal this way the
15 1904 J. D. Clinger J. P.

"Exhibit 3" filed
with deposition of W.M.
Young in suit of

W.M. Young vs. A.B. Nichols

Filed May 9, 1907.

H.C.J. Ewing,
clerk.

THIS DEED made and entered into this the 15th day of February, 1905, by and between Wm. M. Young and Fannie R. Young, his wife, of Lee County, Virginia, parties of the first part, and W. B. Nickles of Big Stone Gap, Virginia, parties of the second part, WITNESSETH: that for and in consideration of \$4000.00 paid and to be paid as follows, to-wit: \$3000.00 cash in hand paid the receipt of which is hereby acknowledged and the balance to be paid in two installments of \$500.00 each in six and twelve months from this date respectively, evidenced by the notes of the party of the second part, bearing date the date hereof, payable as aforesaid, and bearing 6% interest from date; to secure the payment of which notes a vendors lien is hereby retained upon the property hereby conveyed. The said parties of the first part do hereby grant, bargain, sell, convey unto said party of the second part all that tract or boundary of land, located in Lee County, Virginia, in the Wild Cat Valley, more particularly bounded and described as follows, to-wit: Beginning at a stake 2 feet from walnut pointer on the west line of the Preston survey and corner to land conveyed to the Keystone Coal and Iron Company et al by Wm. M. Young by deed of even date herewith, and with a line of same S. 28 1/2 E. 291 feet to a stake, being N. 53° 45' W 47 feet from a beech pointer; N. 58 E. 2533 feet to a stake in a flat, 4 feet and 5 feet from dogwood pointers; N. 43 E 710 feet to a stake 7 feet from white oak pointer and 7 feet from dogwood pointer; N. 48° 50' W. 251 feet to a set stone on the right of way line of the Virginia & Southwestern Railroad, being 25 feet from the center line of said railroad and with the said right of way N. 36 1/4 E. 980 feet to a stake; thence curving to the right with a radius of 850 feet more or less, to a stake, the chord of the curve being N. 46 1/2 E. 358 feet; N 58 1/2 E. 205 feet to a stake thence curving to the left with a radius of 950 feet more or less to a stake, the chord of the curve being N 45 1/4 E. 538 feet; thence N. 51 1/2 W. 64 feet to a stake on a line of the Preston survey, being 7 feet from Elm pointer and with said line of said survey N. 36° 11' E. 1214 feet to a stake N. 81 10 W. 133 feet to a black oak; N 72 10 W. 128 feet

to a beech and dogwood; N. 45 40 W. 439 feet to a stake in the Public road and with the same S. 34 50 W. 217 feet; S. 35 40 W. 364 feet; S 20 W. 153 feet; S. 45 1/2 W. 212 feet; thence leaving the road N. 36 W. 117 feet to a stake; N 73° 20' W. 325 feet to a small black oak S. 56 1/2 W. 402 feet to a stake; S. 26 W. 377 feet to a stake S. 43 10' W. 156 feet to a stake; S. 28 1/4 W. 444 feet to a beech and sassafras; S. 59 1/2 W. 580 feet to a stake, black oak and pine pointers; S. 81 10 W. 96 feet to a stake; N. 38 W. 201 feet to a stake; S. 44 W. 417 feet to a stake; S 50 W 187 feet to 2 small black oaks; S. 56 1/4 W. 334 feet to a stake; S. 47 W. 358 feet to a black oak; S. 42 W. 220 feet to a stake, 2 kickory pointers; S 20 1/4 W. 305 feet to a small black oak; S. 35 1/2 W. 164 feet to a sugar tree; S. 24 50 W. 174 feet to a stake on the right of way line of the V. & S. W. R. R. and 25 feet from the center line of said R. R. and with the said right of way, curving to the left with a radius of 980 feet more or less, to a stake; the chord of the curve being S. 50 50 W. 753 feet; S. 29 40 W. 83. 5 feet to a stake on line of the Preston Survey; thence leaving the said right of way line and crossing the V. & S. W. R. R. and with a line of the Preston survey S 28 1/2 E. 364 feet to a stake N. 68 E. 36 feet to a stake, poplar sprouts, pointers; S 35 28 E. 472 feet to a stake, poplar sprouts, pointers; S. 35 28 E. 472 feet to a stake 2 poplar pointers; S. 53 10 W. 95 feet to the beginning, containing 175.03 acres, including in this boundary right of way of the V. & S. W. R. R. which being deducted, leaves 167.84 acres more or less.

But there is excepted and reserved out of this deed all the coal and coal products, oils and gasses, salt minerals and salt waters, iron and iron ore and other minerals and mineral products, lying in, on or under the said described land, together with all such rights of way and all other rights of every kind, nature and description, such as were reserved in a certain deed from the Keystone Coal and iron Company and others to the said WM. M. Young, bearing date the 15th day of April, 1904, conveying the said tracts of land to the said Young. And the said parties of the first part also grant to the said party of the second part the right to use water for do-

mestic and farming purposes from the spring on the south side of the public road, near the present dwelling house of the said party of the second part, and also the right to get firewood for domestic purposes from any down timber on a tract of land which was released by the said Wm. Young to the said Keystone Coal and Iron Company & others, by a certain deed also bearing date the 15th day of April, 1904, which lies on the Powell's mountain side of the said original Young tract of land, and also the right under certain conditions to cut unmerchantable timber under 12 inches in diameter from the following tract of land located on said Powell's mountain, to-wit: Beginning at a stake 4 feet and 5 feet from dogwood pointers, corner to land conveyed to said Young by the Keystone Coal and Iron Company et al; thence with one line of same north 43 east 710 feet to a stake 7 feet from a white oak pointer, and 7 feet from dogwood pointer, S 47 E. 1840.6 feet to a stake; S. 43 W. 710 feet to a stake N. 47 W. 1840.6 feet to the beginning containing 30 acres, more or less. And the said parties of the first part hereby grant and convey to the said party of the second part all the right, title and interest which they now own of every kind and description of, in and to ^{The} said tract of land, and they hereby transfer, assign and set over to the said party of the second part all their rights and privileges which they have in connection with said land. It being the intention of this deed that the said party of the second part herein shall assume the place of the said parties of the first part in connection with said land which the said parties of the second part had upon the execution and delivery of the aforesaid deed from the Keystone Coal and Iron Company et al to the said Wm. Young, bearing date April 15, 1904. The said party of the second part takes said lands subject to all the conditions limitations, privileges and agreements contained in the said deed of April 15th, 1904, as fully as if the same were set out at length herein.

And the said parties of the first part covenant to and with the said party of the second part they are seised of said land in fee simple and have a right to convey the same; that the said party of the second part shall have quiet and peaceable possession thereof; that the said parties of the first part have done no act to encum-

ber the said land and that the same is free from encumbrances; that they will execute or cause to be executed such further assurances of title thereto as may be requisite, and that they will warrant generally the title to said land. To have and to hold the said land with its appurtenances unto the said party of the second part, his heirs and assigns in fee simple, except as hereinbefore reserved and excepted.

Whereunto, witness the following signatures and seals this the day and year first above written.

W. M. Young (SEAL)

Fannie R. Young (SEAL)

V I R G I N I A :- Wise County, to-wit:

I, Wm. B. Carnes, a Notary Public in and for the County of Wise and State of Virginia, certify that on the 1st day of April, 1905. Wm. M. Young and Fannie R. Young, whose names are signed to the forefoing instrument of writing from Wm. M. Young & Fannie R. Young, his wife, to W. B. Nickels, bearing date February 15th, 1905, personally appeared before me in my said county and State and acknowledged the same before me to be their respective acts and deeds in due form, and according to law. Witness my hand this 1st day of April, 1905.

Wm. B. Carnes, N. P. Wise County, Va.

My Commission expires April, 29, 1907.

Virginia, Lee County, to-wit:

In the Clerk's office of Lee County, on this the 21st day of April, 1905. This deed was presented, and together with the certificate annexed, admitted to record.

Teste; H. C. T. Ewing, Clerk.

A copy,

Teste: H. C. T. Ewing, Clerk.

"Exhibit Statement"
 filed with deposition of Wm. J. ...
 in suit of ... vs ...

Filed May 9, 1907.
 J. B. Collier
 Clerk.

J. B. COLLIER,

—DEALER IN—

General Merchandise.

Big Stone Gap, Va., 190

Com.	78 00
Com.	5 00
Ry. S. & D.	6 00
B. R. S.	2 50
Ry. S. & D.	2 00
To McDowell	80
	<hr/> 94 30

1797.54
 562.95-
 1234.59

B. com.	20 00
B. Club	5 00
Ry. S. & D.	10 00
Ry. T. & L.	85
H. com.	10 00
C. & F.	17
	<hr/> 82 02

Polars

7 1/2 Mule Car	35 00
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J. B. COLLIER

General Merchandise

To cash	150 00
To note	57 00
To cash	20 00
To -	10 00
To cash	10 00
To note	290 84
To cash	10 50
To cash	141 57
	<hr/>
	719 41

228054
 177759

 50295

To deposit 1989 66
 39 50

 1949 16

To Cash	2250	
To Cash	1000	1949 16
To	700	17157
	<hr/>	<hr/>
	3950	177759

3000 00
 71941

 228059

Circuit Court of Lee County
vs. Mr. Young

W. B. Nickels

Complainant excepts to the
that part of the so called sup-
plemental answer of defendant
which undertakes to set up that
there are liens on the land
in controversy because

1st - The original answer of de-
fendant shows that the deed
of trust to secure the debt
due to S. Matthews bond,
has been satisfied - the mere
fact that the lien has not
been released of record con-
stitutes no defense.

2nd - Because the other alleged
liens are not pleaded with
sufficient certainty - nor
with sufficient positiveness.

Bullitt & Kelly

Attys for Compt.

Wm. M. Young

vs. { Exceptions
to Sup. App.

W. B. Nichols

Filed Feb. 18, 1907-

H. C. P. Ewing,
Clerk.

NOTICE.

W. M. YOUNG Plaintiff,

Vs.

W. B. NICKELS Defendant.

In chancery.

Pursuant to a decree rendered by the

Circuit Court of Lee County, Virginia, at the May Term, 1907, in the above styled cause, the undersigned will, at public auction, at the front door of the Courthouse of said County, on the 22nd day of July, 1907, proceed to sell, to the highest and best bidder, the following described property, to-wit:

A certain tract of land lying in the Wildcat Valley, in Lee County, Virginia, containing about 167.84 acres, after excepting therefrom the right of way of the V. & S. W. Ry. Co., excepting certain minerals and mineral and timber-rights therefrom, and will also sell certain rights and privileges in and to a certain spring, and also certain rights in and to a certain other tract of land lying adjacent to the first above mentioned tract, and containing about 30 acres. A full and complete description of said property and rights and privileges, with the exceptions made therein, by reference to deed dated Feb. 15, 1905, from W. M. Young and wife to W. B. Nickles which deed is recorded in Lee County, Virginia, Deed Book, No. 42, page 501.

TERMS OF SALE: One-Third cash, and balance payable in one year from date of sale, for which deferred payment the note of the purchaser will be required, and the title to said land retained as security therefor until a conveyance shall have been ordered by the Court.

This the 8th of July, 1907.

GEO. P. CRIDLIN.

Special Commissioner.

W. M. Young

VS

W. B. Nichols

I,

J. C. Boutwell

, editor

of The Jonesville Star, a weekly newspaper
published in the county of Lee, state of Virginia,

do hereby certify that the enclosed notice was

published in said paper once a week for ~~two~~

successive weeks, commencing on the 11

day of

July

1907

J. C. Boutwell

, Editor.

FEE \$ 4.00



"Exhibit Map" filed
 with deposition of R.T. Insua
 in case of U.S. Young vs.
 St. Nickels, pending in Circuit
 Court of Lee County, Va.
 J.P. Taylor M.P.

MAP OF K.M. M. YOUNG LAND
 — LEE COUNTY, VIRGINIA —
 — COMPROMISE WITH KEYSTONE COAL & IRON CO. ET AL —
 — AND K.M. M. YOUNG —
 — SCALE 400 FT. TO AN INCH —
 — MARCH 23TH, 1904 —

H. M. Young

vs.

W. B. Nichols

Filed May 11 1907

J. H. I. Ewing, Clerk

"Exhibit Maps"